

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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ORIENT INSURANCE COMPANY, a Corpora-  
tion, and THE EMPLOYERS' FIRE IN-  
SURANCE COMPANY, a Corporation,  
Plaintiffs in Error,

vs.

CLEMENTE ARIASI,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the Southern Division of the  
United States District Court of the  
Northern District of California,  
Second Division.

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FILED

MAR 6 - 1928

F. D. MONCKTON,  
CLERK.



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Circuit Court of Appeals

For the Ninth Circuit.

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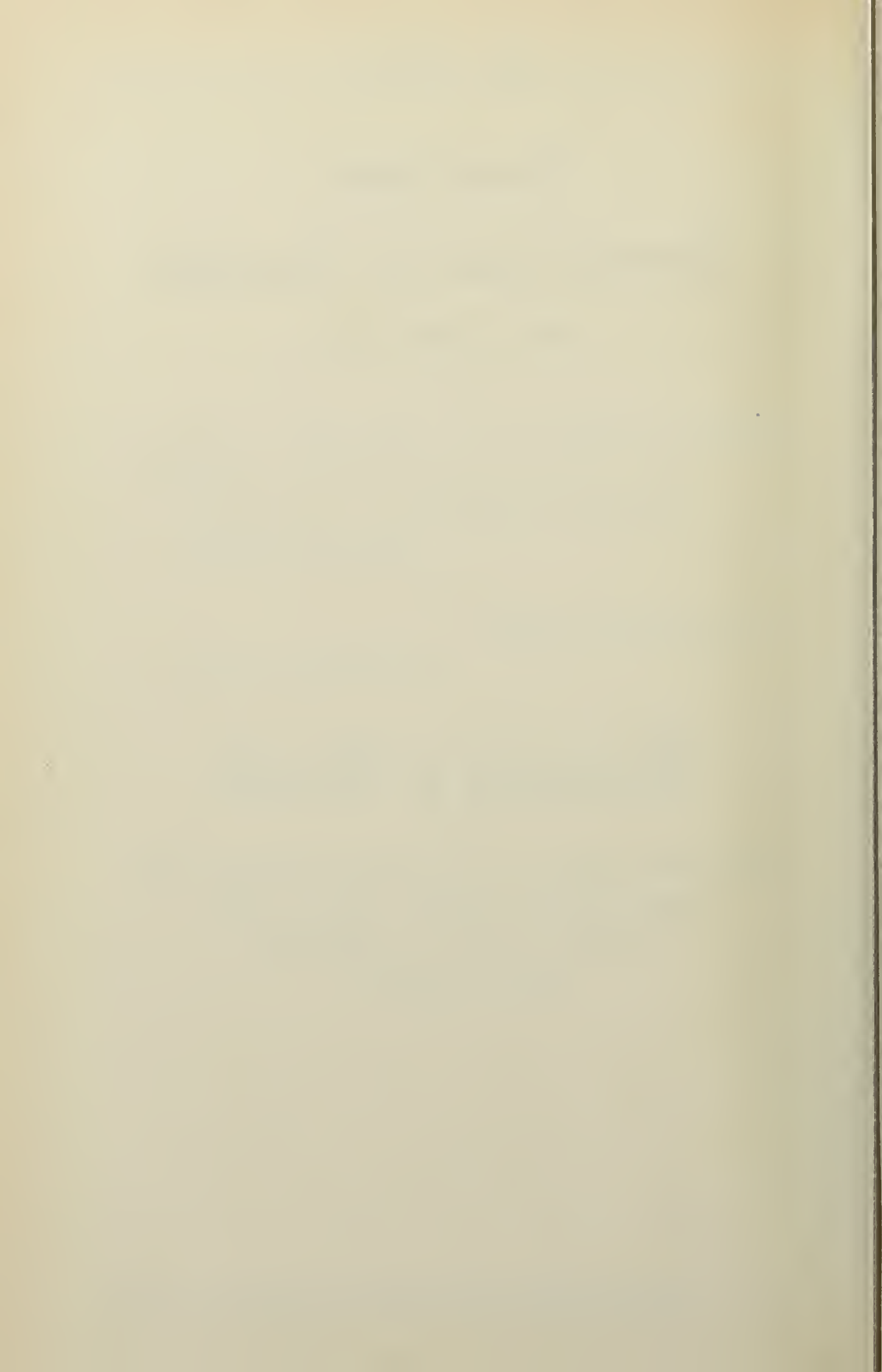
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

ROY LEON DAILY, Esq., United Bank and Trust  
Co. Bldg., San Francisco, California,  
Attorney for Plaintiff.

MILLER & THORNTON, Esqrs., Russ Building,  
San Francisco, California,  
Attorneys for Defendants.

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In the Superior Court of the State of California in  
and for the City and County of San Francisco.

No. 166,227.

Dept. No. —.

CLEMENTE ARIASI,

Plaintiff,

vs.

ORIENT INSURANCE COMPANY, a Corpora-  
tion, and THE EMPLOYERS' FIRE IN-  
SURANCE COMPANY, a Corporation,  
Defendants.

COMPLAINT ON FIRE INSURANCE  
POLICIES.

Plaintiff sues defendants and for cause of action  
alleges:

## I.

That at all times herein mentioned the defendant, Orient Insurance Company, a corporation, has been and is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, duly qualified to do business in the State of California and doing business therein.

## II.

That at all times herein mentioned, the defendant, The Employers' Fire Insurance Company, has been and is a corporation duly organized and existing under and by virtue of the laws of the State of Massachusetts, duly qualified to do business in the State of California and doing business therein.

## III.

That on the 23d day of October, 1924, plaintiff was [1\*] the owner and in the possession of a stock of wine, the same being manufactured and in storage, contained on the premises and in the frame winery building situate on the west side of Polk Street opposite the end of West Seventh Street in the City of Santa Rosa, County of Sonoma, State of California, and the said wine was then and there of the value of Nineteen Thousand Five Hundred Thirty-seven and 50/100 (19,537.50) Dollars, and continued to be of such value until the destruction of the same by fire as hereinafter mentioned.

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\*Page-number appearing at the foot of page of original certified Transcript of Record.



IV.

That on said 23d day of October, 1924, defendant, Orient Insurance Company, in consideration of the sum of Seventy and 50/100 (70.50) Dollars then and there paid by plaintiff unto said defendant, did insure plaintiff in the sum of Five Thousand (5,000) Dollars against all loss or damage by fire to the said stock of wine while in the said frame winery building contained as aforesaid and did make, issue and deliver unto plaintiff its policy of insurance No. 225598, being a California Standard Form Fire Insurance Policy, a true copy of which is attached hereto and made a part hereof, marked Exhibit "A," and thereby undertook and promised as is therein set forth, the said property insured being in said policy set forth as follows, that is to say:

"\$5000.00—On stock of wine, manufactured, unmanufactured, in process of manufacture and on materials and supplies used for manufacturing same, his own, or held by him in trust or on commission, or sold but not delivered; all while contained in the frame Winery building situate on the west side of Polk Street, opposite end of West Seventh Street, Santa Rosa, California." [2]

V.

That on the 26th day of June, 1925, and before the expiration of the time limited in said policy, and

while the said wine was so stored and contained in the said frame building, and while plaintiff was the owner thereof, the said wine was by misfortune and from causes unknown to plaintiff, totally destroyed by fire; that plaintiff gave notice to defendant in writing as soon as possible thereafter, and within the time limited in said policy for such notice to be given, and thereupon made due proof of loss thereof and furnished the same to defendant, and all of the conditions of said policy of insurance, on the part of plaintiff to be performed, were duly performed and kept by plaintiff.

#### VI.

That the loss to plaintiff by the destruction as aforesaid of the said wine was in excess of the sum of Five Thousand (5,000.00) Dollars, to wit, the sum of Nineteen Thousand Five Hundred Thirty-seven and 50/100 (19,537.50) Dollars; and that the said loss was by the terms of said policy made payable to plaintiff; that the actual cash value of the interest of plaintiff insured in said property at the time of said loss, and at all times since said loss, was in excess of Five Thousand and no/100 (5,000.00) Dollars, and it would cost plaintiff insured an amount exceeding the said sum of Five Thousand and no/100 (5,000.00) Dollars to replace the said stock of wine with a stock of wine of like kind and quality.

#### VII.

That more than ninety (90) days have elapsed

since the delivery by plaintiff to said defendant of the said proof of loss and plaintiff has demanded from the said defendant the said sum of Five Thousand and no/100 (5,000.00) Dollars, but defendant has [3] failed and refused to pay the same or any part thereof, and the said sum of Five Thousand and no/100 (5,000.00) Dollars is now due, owing and unpaid from defendant to plaintiff.

As and for a second, separate and distinct cause of action by plaintiff against defendant, The Employers' Fire Insurance Company, plaintiff alleges:

I.

At this point plaintiff refers to paragraph II of its first cause of action herein contained, and by this reference incorporates herein said paragraph to the same extent as if said paragraph was at this point rewritten and set forth at length.

II.

That on the 6th day of October, 1924, plaintiff was the owner and in the possession of a stock of wine, the same being manufactured and in storage, contained on the premises and in the frame winery building situate on the west side of Polk Street opposite the end of West Seventh Street in the City of Santa Rosa, County of Sonoma, State of California, and the said wine was then and there of the value of Nineteen Thousand Five Hundred Thirty-seven and 50/100 (19,537.50) Dollars and

continued to be of such value until the destruction of the same by fire as hereinafter mentioned.

### III.

That on said 6th day of October, 1924, defendant, The Employers' Fire Insurance Company, in consideration of the sum of Twenty-one and 15/100 (21.15) Dollars then and there paid by plaintiff unto said defendant, did insure plaintiff in the sum of Fifteen Hundred and no/100 (1500.00) Dollars against all loss or damage by fire to the said stock of wine while in the said [4] frame winery building contained as aforesaid and did make, issue and deliver unto plaintiff its policy of insurance No. 14386, being a California Standard Form Fire Insurance Policy, a true copy of which is attached hereto and made a part hereof, marked Exhibit "B," and thereby undertook and promised as is therein set forth, the said property insured being in said policy set forth as follows, that is to say:

“\$1500.00—On stock of wine, manufactured, unmanufactured, in process of manufacture and on materials and supplies used for manufacturing same, his own, or held by him in trust or on commission, or sold but not delivered; all while contained in the frame winery building, situate on the west side of Polk Street, opposite end of West Seventh Street, Santa Rosa, California.”

## IV.

That on the 26th day of June, 1925, and before the expiration of the time limited in said policy, and while the said wine was so stored and contained in the said frame building, and while plaintiff was the owner thereof, the said wine was by misfortune and from causes unknown to plaintiff, totally destroyed by fire; that plaintiff gave notice to defendant in writing as soon as possible thereafter, and within the time limited in said policy for such notice to be given, and thereupon made due proof of loss thereof and furnished the same to defendant, and all of the conditions of said policy of insurance, on the part of plaintiff to be performed, were duly performed and kept by plaintiff.

## V.

That the loss to plaintiff by the destruction as aforesaid [5] of the said wine was in excess of the sum of Fifteen Hundred and no/100 (1500.00) Dollars, to wit, the sum of Nineteen Thousand Five Hundred Thirty-seven and 50/100 (19,537.50) Dollars; and that the said loss was by the terms of said policy made payable to plaintiff; that the actual cash value of the interest of plaintiff insured in said property at the time of said loss, and at all times since said loss, was in excess of Fifteen Hundred and no/100 (1500.00) Dollars, and it would cost plaintiff insured an amount exceeding the said sum of Fifteen Hundred and no/100 (1500.00) Dollars



to replace the said stock of wine with a stock of wine of like kind and quality.

## VI.

That more than ninety (90) days have elapsed since the delivery by plaintiff to said defendant of the said proof of loss and plaintiff has demanded from the said defendant the said sum of Fifteen Hundred and no/100 (1500.00) Dollars but defendant has failed and refused to pay the same or any part thereof, and the said sum of Fifteen Hundred and no/100 (1500.00) Dollars is now due, owing and unpaid from defendant to plaintiff.

WHEREFORE, plaintiff demands judgment.

(1) Against the defendant, Orient Insurance Company for the sum of Five Thousand and no/100 (5000.00) Dollars and interest at seven (7) per cent per annum from the date that said sum became payable, and costs of suit; and

(2) Against the defendant, The Employers' Fire Insurance Company for the sum of Fifteen Hundred and no/100 (1500.00) Dollars and interest thereon at seven (7) per cent per annum from the date that said sum became payable, and costs of suit.

R. L. DAILY,

Attorney for Plaintiff. [6]

State of California,

City and County of San Francisco,—ss.

Clemente Ariasi, being first duly sworn, says:

That he is the plaintiff in the above-entitled

action; that he has read the foregoing complaint on fire insurance policies and knows the contents thereof and the same is true of his own knowledge, except as to those matters which are therein alleged on his information and belief, and as to those matters he believes it to be true.

CLEMENTE ARIASI.

Subscribed and sworn to before me this 9th day of February, 1926.

[Seal]

CHAS. R. HALTON,

Notary Public in and for the City and County of San Francisco, State of California. [7]

EXHIBIT "A."

California Standard Form Fire Insurance Policy.  
No. 225598.

No Other Insurance Permitted  
Except by Agreement Endorsed Hereon or Added  
Hereto.

ORIENT INSURANCE COMPANY,  
HARTFORD, CONNECTICUT.

Stock Company Incorporated 1867.

Pacific Department—San Francisco, Cal.

Amount \$5000 Rate 1.41 Premium \$——

IN CONSIDERATION of the stipulations herein named and of Seventy and 50/100ths Dollars premium does insure Clemente Ariasi for the term of one year from the 23rd day of October, 1924, at

noon to the 23rd day of October, 1925, at noon against ALL LOSS OR DAMAGE BY FIRE, except as herein provided, to an amount not exceeding Five Thousand and 00/100ths Dollars to the following described property while located and contained as described herein, and not elsewhere, to wit:

\$5,000.00—On stock of wine, manufactured, unmanufactured, in process of manufacture and on materials and supplies used for manufacturing same, his own, or held by him in trust or on commission, or sold but not delivered all while contained in the frame Winery building situate on the west side of Polk Street, opposite end of West Seventh Street, Santa Rosa, California.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 225598 of the Orient Insurance Company. Agency at Santa Rosa, California. Dated September 29, 1924.

Insurance Map

Sheet 55

Block 214

No. ———.

BARNETT & READING,

Agent. [8]



The company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of the loss or damage nor exceeding what it would then cost the insured to repair or replace the same with material of like kind and quality; said cash value to be estimated without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating repair or construction of buildings, and without compensation for loss resulting from interruption of business or manufacture.

This policy is made and accepted subject to the foregoing stipulations and conditions and those hereinafter stated, which are hereby specially referred to, and made part of this policy, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except by writing endorsed hereon or added hereto, and no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy shall not be valid until countersigned by the duly authorized agent of the company at

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IN WITNESS WHEREOF, this Company has executed and attested these presents.

ORIENT INSURANCE COMPANY.

GEO. O. SMITH,

Attorney of said Company and Manager for the Pacific Department.

A. G. McELWAINE, Jr., President.

HARRY W. GRAY, Jr., Secretary.

Countersigned at Santa Rosa, Calif., this 29th day of September, 1924.

BARNETT & READING,

Agent. [9]

[Stamped across signatures:] Sample.

STIPULATIONS AND CONDITIONS SPECIALLY REFERRED TO.

*Property not covered.*—(a) This company shall not be liable for loss to accounts, bills, currency, evidences of debt or ownership or other documents, money, notes or securities; nor, (b) unless liability is specifically assumed hereon, for loss to bullion, casts, curiosities, drawings, dies, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, business or store or office furniture or fixtures, sculptures, frescoes, decorations, or property held on storage or for repair.

*Hazards not covered.*—This company will not be liable for loss by (a) theft; or (b) by neglect of the insured to use all reasonable means to save and pre-

serve the property at and after a fire, or when the property is endangered by fire; or (c) (unless fire ensues, and in that event for the damage by fire only) by explosion of any kind or lightning; or (d) by invasion, insurrection, riot, civil war, or commotion, or (except as hereinafter provided) by military or usurped power, or order of any civil authority, but the company will be liable (unless otherwise provided by endorsement hereon or added hereto) if the property is lost or damaged, by fire or otherwise, by civil authority or military or usurped power exercised to prevent the spread of fire not originating from a cause excepted hereunder and which fire otherwise probably would have caused the loss of or damage to the insured property.

*Matters avoiding policy.*—This entire policy shall be void, (a) if the insured has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject thereof; or, (b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be void, (a) if the insured now has or shall procure any other insurance, whether valid or not, on property covered in whole or in part by this policy, or (b) if the interest of the insured be other than un-

conditional and sole ownership, or (c) if the subject of insurance be a building on ground not owned by the insured in fee simple, or (d) if with the knowledge of the insured foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed, or (e) if this policy be assigned before a loss.

*Matters suspending insurance.*—Unless otherwise provided by agreement endorsed hereon or added hereto this company shall not be liable for loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured; or (b) if the subject of insurance be a manufacturing establishment, while it is operated in whole or in part at night later than ten o'clock or while it ceases to be operated beyond the period of ten consecutive days; or (c) while mechanics or artisans are employed in building or altering or repairing the described premises for more than fifteen days at any one time; or (d) while illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or (e) while there be kept, used or allowed on the described premises (any usage or custom of trade or manufacture to the contrary notwithstanding) calcium carbide, phosphorus, dynamite, nitroglycerine, fireworks or other explosives; or exceeding one quart each of benzine, gasoline, naphtho or

ether; or more than twenty-five pounds of gunpowder; or (f) while a building herein described whether intended for occupation by owner or tenant is vacant or unoccupied beyond the period of ten (10) consecutive days; (g) while the interest in, title to or possession of the subject of insurance is changed excepting: (1) by the death of the insured; (2) a change of occupancy of building without material increase of hazard; and (3) transfer by one or more several copartners or co-owners to the others.

Such suspension shall not extend the term of this policy nor create any right for refund of the whole or any portion of premium, nor affect the respective rights of cancellation.

*Chattel mortgage.*—Unless otherwise provided by agreement in writing endorsed hereon or added hereto this company shall not be liable for loss or damage to any property insured hereunder while encumbered by a chattel mortgage, but the liability of the company upon other property hereby insured shall not be affected by such chattel mortgage.

*Fallen building clause.*—Unless otherwise provided by agreement endorsed hereon or added hereto, if a building or any material part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

*Removal when endangered by fire.*—Should any of said property be necessarily removed because of



danger from fire, and there is no other insurance thereon, that part of this policy in excess of the value of the insured property remaining in the original location, or, if there is other insurance thereon, that part of this policy in excess of its proportion of the value of the insured property remaining in the original location, shall, for the ensuing five days only, cover said removed property in its new location or locations.

*Cancellation.*—This policy shall be cancelled at any time at the request of the insured, in which case the company shall, upon surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time, without tender of unearned portion of premium, by the company by giving five (5) days' written notice of cancellation to the insured and to any mortgagee or other party to whom, with the written consent of the company, this policy is made payable, in which case the company shall, upon surrender of the policy or relinquishment of liability thereunder, refund the excess of paid premium above the pro rata premium for the expired time.

*Duty of insured in case of loss.*—When a loss occurs the insured must give to this company written notice thereof without unnecessary delay; and shall protect the property from further damage; forthwith separate the damaged and undamaged personal

property and put it in the best possible order; and without unnecessary delay make a complete inventory stating as far as possible the quantity and cost of each article, and the amount claimed thereon.

Within sixty days after the commencement of the fire the insured shall render to the company at its main office in California named herein preliminary proof of loss consisting of a written statement signed and sworn to by him setting forth:—(a) his knowledge and belief as to the origin of the fire; (b) the interest of the insured and of all others in the property; (c) the cash value of the different articles or properties and the amount of loss thereon; (d) all incumbrances thereon; (e) all other insurance, whether valid or not, covering any of said articles or properties; (f) a copy of the descriptions and schedules in all other policies unless similar to this policy, and in that event, a statement as to the amounts for which the different articles or properties are insured in each of the other policies; (g) any changes of title, use, occupation, location or possession of said property since the issuance of this policy; (h) by whom and for what purpose any building herein described, and the several parts thereof, were occupied at the time of the fire.

If the company claims that the preliminary proof of loss is defective and within five days after the receipt thereof (without admitting the amount of loss

or any part thereof) notifies in writing the insured, or the party making such proof of loss, of the alleged defects (specifically stating them) and requests that they be remedied by verified amendments the insured or such party within ten days after the receipt of such notification and request must comply therewith or, if unable so to do, present to the company an affidavit to that effect.

The insured shall also furnish, if required, as far as it is practicable to obtain the same, verified plans and specifications of any buildings, fixtures or machinery destroyed or damaged; and the insured shall exhibit to any person designated in writing by this company all that remains of any property herein described and shall submit to examination under oath, as often as required, by any such person, and subscribe to the testimony so given and shall produce to such person for examination all books of account, bills, invoices and other vouchers, and permit extracts and copies thereof to be made, and in case the originals are lost certified copies, if obtainable, shall be produced.

*Ascertainment of amount of loss.*—This company shall be deemed to have assented to the amount of the loss claimed by the insured in his preliminary proof of loss, unless within twenty days after the receipt thereof, or, if verified amendments have been requested, within twenty days after their receipt, or within twenty days after the receipt of an affidavit that the insured is unable to furnish such



amendments, the company shall notify the insured in writing of its partial or total disagreement with the amount of loss claimed by him and shall also notify him in writing of the amount of loss, if any, the company admits on each of the different articles or properties set forth in the preliminary proof or amendments thereto.

If the insured and this company fail to agree, in whole or in part, as to the amount of loss within ten days after such notification, this company shall forthwith demand in writing an appraisement of the loss or part of loss as to which there is a disagreement and shall name a competent and disinterested appraiser, and the insured within five days after receipt of such demand and name, shall appoint a competent and disinterested appraiser and notify the company thereof in writing, and the two so chosen shall before commencing the appraisement, select a competent and disinterested umpire.

The appraisers together shall estimate and appraise the loss or part of loss as to which there is a disagreement, stating separately the sound value and damage, and if they fail to agree they shall submit their differences to the umpire, and the award in writing duly verified of any two shall determine the amount or amounts of such loss.

The parties to the appraisement shall pay the appraisers respectively appointed by them and shall bear equally the expense of the appraisement and the charges of the umpire.

If for any reason not attributable to the insured, or to the appraiser appointed by him, an appraisement is not had and completed within ninety days after said preliminary proof of loss is received by this company, the insured is not to be prejudiced by the failure to make an appraisement, and may prove the amount of his loss in an action brought without such appraisement.

*Options of company in case of loss.*—This company may, at its option, take all or any part of the property for which insurance hereunder is claimed at its ascertained and appraised value, and may also, at its option, in satisfaction of its liability hereunder repair, rebuild or replace any building or structure or machine or machinery used therein, with other of like kind and quality, within a reasonable time, upon giving notice within twenty days of its intention so to do after the receipt by it of the preliminary proof of loss, or, if verified amendments have been requested, within twenty days after their receipt, or, within twenty days after the receipt of an affidavit that the insured is unable to furnish such amendments.

There can be no abandonment to this company of any property.

*Apportionment of loss.*—This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by, and expenses of, removal from the premises en-

dangered by fire, than the amount hereby insured bears to the entire insurance covering such property whether valid or not, or by solvent or insolvent insurers.

*Loss when payable.*—A loss hereunder shall be payable in thirty days after the amount thereof has been ascertained either by agreement or by appraisal; but if such ascertainment is not had or made within sixty days after the receipt by the company of the preliminary proof of loss, then the loss shall be payable in ninety days after such receipt.

*Non-waiver by appraisal or examination.*—This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof, by assenting to the amount of the loss or damage or by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for.

*Subrogation.*—If this company shall claim that the fire was caused by the act or neglect of any person or corporation, this company shall, on payment of the loss be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

*Time for commencement of action.*—No suit or action on this policy for the recovery of any claim

shall be sustained, until after full compliance by the insured with all of the foregoing requirements, nor unless begun within fifteen months next after the commencement of the fire.

*Definitions.*—Wherever in this policy the word “insured” occurs, it shall be held to include the legal representatives of the insured in case of his death, and wherever the word “loss” occurs, it shall be deemed the equivalent of “loss or damage,” and wherever the words “the time of loss or damage” are used they shall be deemed the equivalent of “the time of the commencement of the fire.”

### EXHIBIT “B.”

California Standard Form Fire Insurance Policy.  
No. 14386.

No Other Insurance Permitted  
Except by Agreement Endorsed Hereon or Added  
Hereto.

THE EMPLOYERS’ FIRE INSURANCE COM-  
PANY,  
BOSTON, MASSACHUSETTS.

Pacific Department, San Francisco, Cal.

CHAS. J. OKELL & CO., General Agents.

Amount \$1500      Rate 1.41.      Premium \$21.15.

IN CONSIDERATION of the stipulations herein named and of Twenty-one and 15/100ths Dollars premium does insure Clemente Ariasi for

the term one year from the sixth day of October, 1924, at noon, to the sixth day of October, 1925, at noon, against ALL LOSS OR DAMAGE BY FIRE, except as hereinafter provided, to an amount not exceeding Fifteen hundred and 00/100ths Dollars to the following described property while located and contained as described herein, and not elsewhere, to wit:

\$1500.00—On stock of wine, manufactured, un-manufactured, in process of manufacture and on materials and supplies used for the manufacturing same, his own, or held by him in trust or on commission, or sold but not delivered; all while contained in the frame winery building, situate on the west side of Polk Street, opposite end of West Seventh street, Santa Rosa, California.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part thereof.

Attached to Policy No. 14386 of the Employers Fire Insurance Co. Agency at Santa Rosa, Calif. (Name of Company.)

Dated Oct. 6, 1924.

Insurance Map.

Sheet .....

Block .....

No. ....

BARNETT & READING,  
Agent. [9a]



In Witness Whereof, this Company has executed and attested these presents.

THE EMPLOYERS' FIRE INSURANCE  
COMPANY, BOSTON, MASS.

SAMUEL APPLETON,  
President.

H. BUDEN, Secretary.

Countersigned at Santa Rosa, Calif., this 25th day  
of Sept. 1924.

\_\_\_\_\_,  
Agent.

[Stamped across face of signatures:] Sample.

\_\_\_\_\_

In the Southern Division of the District Court of  
the United States, for the Northern District of  
California.

No. 17,501.

CLEMENTE ARIASI,

Plaintiff,

vs.

ORIENT INSURANCE COMPANY, a Corpora-  
tion, and THE EMPLOYERS FIRE IN-  
SURANCE COMPANY, a Corporation,  
Defendant.

ANSWER OF THE DEFENDANT, ORIENT IN-  
SURANCE COMPANY.

Now comes the defendant Orient Insurance Com-  
pany, and, answering the complaint of the plain-

tiff heretofore served and filed herein, admits, alleges and denies as follows, to wit:

I.

As to the paragraph in said complaint numbered One, this defendant admits all the allegations therein contained.

II.

As to the paragraph in said complaint numbered Two, this defendant admits all the allegations therein contained.

III.

As to the allegations in said complaint numbered Three, this defendant alleges that it has no knowledge, information or belief sufficient to enable it to answer the allegations therein contained, and therefore, and upon that ground, it denies that on the 23d day of October, 1924, or at any time whatever or at all, the plaintiff above named was the owner of, or in possession of a stock of wine, or any wine, either being manufactured or in storage, or contained on the premises, or in the frame or any [10] winery, or other building, situated on the west side of Polk Street opposite the end of West Seventh Street in the city of Santa Rosa, county of Sonoma, State of California, or elsewhere, or that said or any wine was then or there, or at any time or place whatever, or at all, of the value of Nineteen Thousand Five Hundred Thirty-seven and 50/100ths Dollars (19,537.50), or of any value, or contained to be of such or any value until the destruction of the same by

fire as in said complaint alleged, or until any time whatever or at all.

#### IV.

As to the paragraph in said complaint numbered Four, this defendant admits the issuance and delivery by it to the plaintiff above named of the policy of insurance in said paragraph referred to in the manner and form as set forth and stated in Exhibit "A" to said complaint attached, and not otherwise.

#### V.

As to the paragraph in said complaint numbered Five, this defendant alleges that it has no knowledge, information or belief sufficient to enable it to answer the allegations therein contained, and therefore, and upon that ground, it denies that on the 26th day of June, 1925, or before the expiration of the time limited in said policy, or while said or any wine was so or otherwise stored or contained in said or any frame or other building, or while plaintiff was the owner of said wine or of any wine, said wine or any wine was by misfortune or from causes unknown to plaintiff totally or otherwise destroyed by fire; and on the same ground said defendant denies that all or any of the conditions of said policy of insurance on the part of plaintiff to be performed; and on the same ground denies that plaintiff gave notice to defendant in writing as soon as possible thereafter, [11] or that he thereupon made or furnished to the defendant due proof of loss thereof, or that all or any of the conditions



of said policy of insurance on the part of plaintiff to be performed were duly or otherwise performed or kept by plaintiff.

## VI.

As to the paragraph in said complaint numbered Six, this defendant alleges that it has no knowledge, information or belief sufficient to enable it to answer the allegations therein contained, and therefore, and upon that ground, it denies that the loss to plaintiff by the destruction as in said complaint alleged, or otherwise, of the wine therein referred to, or of any wine, was in excess of the sum of Five Thousand Dollars (\$5,000.00), or was the sum of Nineteen Thousand Five Hundred Thirty-seven and 50/100th Dollars (\$19,537.50), or was any sum whatever or at all, and on the same ground denies that the actual or any cash or other value of the interest of plaintiff in said property at the time of said loss, or at all, or at any time since said loss, or at any time whatever, or at all, was in excess of Five Thousand Dollars (\$5,000.00), or was any sum whatever, or that it would cost plaintiff an amount exceeding the sum of Five Thousand Dollars (\$5,000.00), or any sum, to replace said or any stock of wine, or any wine, with a stock of wine or any wine of like kind or character; and this defendant denies that the loss claimed by the plaintiff in his said complaint was or is by the terms of said policy made payable to plaintiff, or that any loss in excess of Five Thousand Dollars (\$5,000.00) is made payable to plaintiff.

## VII.

As to the paragraph in said complaint numbered Seven, this defendant denies that there is now due or owing from defendant to plaintiff the sum of Five Thousand Dollars (\$5,000.00), or any sum whatever, or at all. [12]

And for a second and separate answer and defense to said complaint, this defendant alleges:

## I.

That in and by the policy of insurance issued and delivered by this defendant to plaintiff, as in his complaint alleged, it was and is provided as follows, to wit:

“This entire policy shall be void (a) if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance, or the subject thereof,”

and this defendant alleges that at the time of the issuance and delivery by it to said plaintiff of said policy of insurance, said plaintiff concealed from this defendant material facts and circumstances concerning his insurance and the subject thereof, and in particular as follows, to wit:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition laws of the

United States, "to manufacture wines for non-beverage purposes on bonded winery premises, subject to Internal Revenue Laws; to taxpay and remove from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other nonbeverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60," which was and is the only [13] permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold, and otherwise disposed of, and was then manufacturing, selling, and otherwise disposing of, wine for beverage purposes.

(3) That plaintiff concealed from this defendant the violations by him as aforesaid of said permit, and of the Prohibition Laws of the United States, for the purpose of inducing this defendant to issue and deliver to him the policy of insurance aforesaid, well knowing that this defendant would not,

and it hereby alleges that it would not, have issued and delivered to him said policy of insurance had it been aware of such violations upon his part.

And this defendant alleges that it did not know of such violations, or any thereof, on the part of said plaintiff, until after the fire in plaintiff's complaint alleged.

## II.

And this defendant alleges that, by reason of the facts set forth and stated in paragraph I of this second and separate answer and defense to plaintiff's complaint, the policy of insurance in said complaint alleged to have been issued and delivered to plaintiff by this defendant never went into or took effect, and said defendant now offers to return to plaintiff, and herewith deposits in court for said plaintiff, the premium paid by him to said defendant [14] for the issuance and delivery to him by it of said policy of insurance, namely the sum of Seventy Dollars and Fifty Cents (\$70.50).

And for a third and separate answer and defense to said complaint, this defendant alleges:

## I.

That in and by the policy of insurance in said complaint alleged to have been issued and delivered to plaintiff by this defendant, it was and is provided as follows, to wit:

“This entire policy shall be void \* \* \*  
(b) in case of any fraud or false swearing  
by the insured touching any matter relating to



this insurance of the subject thereof, whether before or after loss”

and this defendant alleges that the plaintiff above named was guilty of fraud and false swearing touching matters relating to his insurance and the subject thereof, and in particular as follows, to wit:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition Laws of the United States, “to manufacture wines for non-beverage purposes on bonded winery premises, subject to Internal Revenue Laws; to taxpay and remove same from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other non-beverage purposes pursuant to permits to purchase, Forms 1412 [15] and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60,” which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and

at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold, and otherwise disposed of, and was then manufacturing, selling and otherwise disposing of, wine for beverage purposes.

(3) That, on the 6th day of November, 1925, the plaintiff above named made, executed and furnished to this defendant an instrument in writing signed and sworn to by him before Anna B. Schwartz, a notary public in and for the city and county of San Francisco, State of California, wherein and whereby he states, among other things, that the building, wherein the wine, which is the subject of the policy of insurance issued and delivered to him by this defendant, as in his complaint alleged, was located, was occupied at the time of the fire in said complaint alleged as bonded winery No. 167, and for no other purpose; while in truth and in fact said building was occupied at the time of said fire as a place where plaintiff was manufacturing, selling and otherwise disposing of wine for beverage purposes in violation of the permit issued to him by the Federal Prohibition Commissioner of the United States, which permit at the time of said fire had been revoked by said Federal Prohibition Commissioner for such action upon the part of said [16] plaintiff.

And this defendant alleges that plaintiff well knew at the time of verifying said instrument that the statement therein contained, that said building

was occupied for no other purpose than as a bonded winery, was false and untrue, and well knew that said building was occupied by him at the time of said fire for the purpose of manufacturing, selling and otherwise disposing of wine for beverage purposes, and that the permit issued to him by the Federal Prohibition Commissioner of the United States had been revoked.

And for a fourth and separate answer and defense to this complaint, this defendant alleges:

I.

That in and by the policy of insurance in said complaint alleged to have been issued and delivered by this defendant to plaintiff, it was and is provided as follows, to wit:

“Unless otherwise provided by agreement endorsed hereon or added hereto, this company shall not be liable for any loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured”

and this defendant alleges that no agreement was ever endorsed upon or added to said policy of insurance waiving the provision above referred to, or any part thereof.

And this defendant alleges that, in violation of the provision aforesaid as to said policy of insurance, the hazard to the property therein described was greatly increased by means within the control of the plaintiff above named over and above the hazard which it was by this defendant intended to

be assumed, and [17] which was assumed in said policy, in this:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition Laws of the United States, "to manufacture wines for nonbeverage purposes on bonded winery premises, subject to Internal Revenue Laws; to taxpay and remove from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other nonbeverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60," which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold, and other-



wise disposed of, and was then manufacturing, selling, and otherwise disposing of, wine for beverage purposes.

And this defendant alleges that, at the time of the issuance and delivery by it of said policy of insurance to said plaintiff, and from that time up to and at the time of the fire in plaintiff's complaint alleged, the building wherein said wine was manufactured [18] and located, and the wine which is the subject of the policy of insurance so issued and delivered by defendant to plaintiff, were used and were being used for an illegal purpose, namely, for the purpose of manufacturing, storing, selling and otherwise disposing of wine for beverage purposes in violation of the provisions of the National Prohibition Act, and in violation of the provisions of a permit from the Federal Prohibition Commissioner to said plaintiff.

And this defendant further alleges that, at the time of the fire in said complaint referred to, the permit so issued and delivered to plaintiff by the Federal Prohibition Commissioner had been by the National Prohibition Authorities cancelled and revoked. And this defendant alleges that because of such cancellation and revocation the wine in said policy referred to became and was of no value in that it could not be legally sold or disposed of. And this defendant further alleges that, by reason of the facts in this paragraph set forth and stated, the hazard to the wine in said plaintiff's said policy of insurance described, became and was very greatly increased with the knowledge and consent of the

plaintiff, and by means within the control of said plaintiff.

And for a fifth and separate answer and defense to said complaint, this defendant alleges:

I.

That in and by the policy of insurance in said complaint alleged to have been issued and delivered by this defendant to plaintiff, it was and is provided as follows, to wit:

“Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be [19] void \* \* \* (b) if the interest of the insured be other than unconditional and sole ownership”

and this defendant alleges that no agreement was endorsed upon or added to said policy of insurance in any way whatever waiving that provision.

And this defendant alleges that from and after the 26th day of December, 1924, up to and at the time of the fire in said complaint alleged, the plaintiff above named was not the unconditional and sole owner, or any owner, of the property in his said policy of insurance described, in this, namely:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition Laws of the United States, “to manufacture wines for non-beverage purposes on bonded winery premises, sub-

ject to internal Revenue Laws; to taxpay and remove the same from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other nonbeverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60," which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said [20] plaintiff had violated, and at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold and otherwise disposed of, and was then manufacturing, selling, and otherwise disposing of, wine for beverage purposes.

(3) That thereafter, and on the 26th day of December, 1924, upon due and proper proceedings in that behalf had and taken by the Internal Revenue Department, Division of Liquor Permits of the United States Government, the permit so issued as aforesaid to said plaintiff was cancelled and revoked, and continued to be cancelled and revoked up to and at the time of the fire in plaintiff's complaint alleged; and at the time of said fire plain-

tiff was in possession of said wine and was using it for illegal purposes, and in violation of the Federal Prohibition Act, namely, for the purpose of selling and disposing of the same for beverage purposes.

And this defendant alleges that because thereof said plaintiff had no property rights in said wine, or in any part thereof, at the time of the fire in his complaint referred to under the provisions of Section 25, Title 2, of the National Prohibition Act, wherein and whereby it is provided as follows, to wit:

“It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title, or which has been so used, and no property rights shall exist in any such liquor or property.”

WHEREFORE, said defendant prays that this action be dismissed as against it, and that it be granted its costs and disbursements herein.

MILLER and THORNTON,  
Attorneys for Defendant. [21]

State of California,  
City and County of San Francisco,—ss.

H. B. M. Miller, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant Orient Insurance Company, a corporation, and makes this verification for and on its behalf, for the reasons (1) that said defendant corporation has no officer in the state of California, or in the city and

county of San Francisco where affiant's offices are located, who can make said verification; (2) that this affiant is more familiar with the facts in said answer alleged than is the said defendant.

That affiant has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated upon information or belief, and that as to those matters he believes it to be true.

H. B. M. MILLER.

Subscribed and sworn to before me this 30th day of September, 1926.

[Seal] MINNIE V. COLLINS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed October 11, 1926. [22]

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[Title of Court and Cause.]

ANSWER OF THE DEFENDANT, EM-  
PLOYERS' FIRE INSURANCE COMPANY.

Now comes the defendant Employers' Fire Insurance Company, and, answering the cause of action against it designated as a second, separate and distinct cause of action in the complaint of plaintiff heretofore served and filed herein, admits, alleges and denies as follows, to wit:

I.

As to the paragraph in the said second, separate and distinct cause of action of said complaint num-



bered One, this defendant admits all the allegations therein contained.

## II.

As to the allegations in said second, separate and distinct cause of action in said complaint numbered Two, this defendant alleges that it has no knowledge, information or belief sufficient to enable it to answer the allegations therein contained, and therefore, and upon that ground, it denies that on the 6th day of October, 1924, or at any time whatever or at all, the plaintiff above named was the owner of, or in possession of a stock of wine, or any wine, either being manufactured or in storage, or [23] contained on the premises, or in the frame or any winery, or other building, situated on the west side of Polk Street opposite the end of West Seventh Street in the city of Santa Rosa, county of Sonoma, State of California, or elsewhere, or that said or any wine was then or there, or at any time or place whatever, or at all, of the value of Nineteen Thousand Five Hundred Thirty-seven and 50/100ths Dollars (\$19,537.50), or of any value, or continued to be of such or any value until the destruction of the same by fire as in said complaint alleged, or until any time whatever or at all.

## III.

As to the paragraph in said second, separate and distinct cause of action in said complaint numbered III, this defendant admits the issuance and delivery by it to the plaintiff above named of the policy of insurance in said paragraph referred to, in the manner and form as set forth and stated in Ex-

hibit "B" to said complaint attached, and not otherwise.

#### IV.

As to the paragraph in said second, separate and distinct cause of action in said complaint numbered four, this defendant alleges that it has no knowledge, information or belief sufficient to enable it to answer the allegations therein contained, and therefore, and upon that ground, it denies that on the 26th day of June, 1925, or before the expiration of the time limited in said policy, or while said or any wine was so or otherwise stored or contained in said or any frame or other building, or while plaintiff was the owner of said wine or of any wine, said wine or any wine was by misfortune or from causes unknown to plaintiff totally or otherwise destroyed by fire; and on the same ground said defendant denies that all or any of the conditions of said policy of insurance on the part of plaintiff to be performed [24] were duly or otherwise performed; and on the same ground denies that plaintiff gave notice to defendant in writing as soon as possible thereafter, or that he thereupon made or furnished to the defendant due proof of loss thereof, or that all or any of the conditions of said policy of insurance on the part of plaintiff to be performed were duly or otherwise performed or kept by plaintiff.

#### V.

As to the paragraph in said second, separate and distinct cause of action in said complaint numbered Five, this defendant alleges that it has no

knowledge, information or belief sufficient to enable it to answer the allegations therein contained, and therefore, and upon that ground, it denies that the loss to plaintiff by the destruction as in said complaint alleged, or otherwise, of the wine therein referred to, or of any wine, was in excess of the sum of One Thousand Five Hundred Dollars (\$1,500.00), or was the sum of Nineteen Thousand Five Hundred Thirty-seven and 50/100ths Dollars (\$19,537.50), or was any sum whatever or at all; and on the same ground denies that the actual or any cash or other value of the interest of plaintiff in said property at the time of said loss, or at all, was in excess of One Thousand Five Hundred Dollars (\$1,500.00), or was any sum whatever, or that it would cost plaintiff an amount exceeding the sum of One Thousand Five Hundred Dollars (\$1,500.00), or any sum, to replace said or any stock of wine, or any wine, with a stock of wine or any wine of like kind or character; and this defendant denies that the loss claimed by the plaintiff in his said complaint was or is by the terms of said policy made payable to plaintiff, or that any loss in excess of One Thousand Five Hundred Dollars (\$1,500.00) is made payable to plaintiff. [25]

## VI.

As to the paragraph in said second, separate and distinct cause of action in said complaint numbered Six, this defendant denies that there is now due or owing from defendant to plaintiff the sum of One Thousand Five Hundred Dollars (\$1,500), or any sum whatever, or at all.

And as and for a second and separate answer and defense to said complaint, this defendant alleges:

I.

That in and by the policy of insurance issued and delivered by this defendant to plaintiff, as in his complaint alleged, it was and is provided as follows, to wit:

“This entire policy shall be void (a) if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance, or the subject thereof,”

and this defendant alleges that at the time of the issuance and delivery by it to said plaintiff of said policy of insurance said plaintiff concealed from this defendant material facts and circumstances concerning his insurance and the subject thereof, and in particular as follows, to wit:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition laws of the United States, “to manufacture wines for nonbeverage purposes on bonded winery premises, subject to Internal Revenue Laws; to taxpay and remove same [26] from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other non-



beverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60," which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold and otherwise disposed of, and was then manufacturing, selling and otherwise disposing of, wine for beverage purposes.

(3) That plaintiff concealed from this defendant the violations by him as aforesaid of said permit, and of the prohibition laws of the United States, for the purpose of inducing this defendant to issue and deliver to him the policy of insurance aforesaid, well knowing that this defendant would not, and it hereby alleges that it would not, have issued and delivered to him said policy of insurance had it been aware of such violations upon his part.

And this defendant alleges that it did not know of such violations, or any thereof, on the part of said plaintiff, until after the fire in plaintiff's complaint alleged. [27]

## II.

And this defendant alleges that, by reason of the facts set forth and stated in paragraph I of this



second and separate answer and defense to plaintiff's complaint, the policy of insurance in said complaint alleged to have been issued and delivered to plaintiff by this defendant never went into or took effect, and said defendant now offers to return to plaintiff, and herewith deposits in court for said plaintiff, the premium paid by him to said defendant for the issuance and delivery to him by it of said policy of insurance, namely the sum of Twenty-one and 15/100ths Dollars (\$21.15).

And for a third and separate answer and defense to said complaint, this defendant alleges:

I.

That in and by the policy of insurance in said complaint alleged to have been issued and delivered to plaintiff by this defendant, it was and is provided as follows, to wit:

“This entire policy shall be void \* \* \*

(b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after loss.”

and this defendant alleges that the plaintiff above named was guilty of fraud and false swearing touching matters relating to his insurance and the subject thereof, and in particular as follows, to wit:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then [28] been revoked, authorizing him subject to the terms and

conditions of said permit, and of the Prohibition laws of the United States, "to manufacture wines for nonbeverage purposes on bonded winery premises, subject to Internal Revenue Laws; to taxpay and remove same from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other nonbeverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60," which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold, and otherwise disposed of, and was then manufacturing, selling and otherwise disposing of, wine for beverage purposes.

(3) That, on the 6th day of November, 1925, the plaintiff above named made, executed and furnished to this defendant an instrument in writing signed and sworn to by him before Anna B. Schwartz, a notary public in and for the city and county of San Francisco, State of California, wherein and whereby

he states, among other things, that the building, wherein the wine, which is the subject of the policy of insurance issued [29] and delivered to him by this defendant, as in his complaint alleged, was located, was occupied at the time of the fire in said complaint alleged as bonded winery No. 167, and for no other purpose; while in truth and in fact said building was occupied at the time of said fire as a place where plaintiff was manufacturing, selling and otherwise disposing of wine for beverage purposes in violation of the permit issued to him by the Federal Prohibition Commissioner of the United States, which permit at the time of said fire had been revoked by said Federal Prohibition Commissioner for such action upon the part of said plaintiff.

And this defendant alleges that plaintiff well knew at the time of verifying said instrument that the statement therein contained, that said building was occupied for no other purpose than as a bonded winery, was false and untrue, and well knew that said building was occupied by him at the time of said fire for the purpose of manufacturing, selling and otherwise disposing of wine for beverage purposes, and that the permit issued to him by the Federal Prohibition Commissioner of the United States had been revoked.

And for a fourth and separate answer and defense to this complaint, this defendant alleges:

I.

That in and by the policy of insurance in said

complaint alleged to have been issued and delivered by this defendant to plaintiff, it was and is provided as follows, to wit:

“Unless otherwise provided by agreement endorsed hereon or added hereto, this company shall not be liable for any loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured”; [30]

and this defendant alleges that no agreement was ever endorsed upon or added to said policy of insurance waiving the provision above referred to, or any part thereof.

And this defendant alleges that, in violation of the provisions aforesaid as to said policy of insurance, the hazard to the property therein described was greatly increased by means within the control of the plaintiff above named, over and above the hazard which it was by this defendant intended to be assumed, and which was assumed in said policy, in this:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition Laws of the United States, “to manufacture wines for nonbeverage purposes on bonded winery premises, subject to Internal Revenue laws; to taxpay and remove



same from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other nonbeverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60," which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and at the time of the issuance and [31] delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold, and otherwise disposed of, and was then manufacturing, selling and otherwise disposing of, wine for beverage purposes.

And this defendant alleges that, at the time of the issuance and delivery to it of said policy of insurance to said plaintiff, and from that time up to and at the time of the fire in plaintiff's complaint alleged, the building wherein said wine was manufactured and located, and the wine which is the subject of the policy of insurance so issued and delivered by defendant to plaintiff, were used and were being used for an illegal purpose, namely, for the purpose of manufacturing, storing, selling and



otherwise disposing of wine for beverage purposes in violation of the provisions of the National Prohibition Act, and in violation of the provisions of a permit from the Federal Prohibition Commissioner to said plaintiff.

And this defendant further alleges that, at the time of the fire in said complaint referred to, the permit so issued and delivered to plaintiff by the Federal Prohibition Commissioner had been by the National Prohibition Authorities cancelled and revoked. And this defendant alleges that because of such cancellation and revocation the wine in said policy referred to became and was of no value in that it could not be legally sold or disposed of. And this defendant further alleges that, by reason of the facts in this paragraph set forth and stated, the hazard to the wine in said plaintiff's said policy of insurance described, became and was very greatly increased with the knowledge and consent of the plaintiff, and by means within the control of said plaintiff. [32]

And for a fifth and separate answer and defense to said complaint, this defendant alleges:

I.

That in and by the policy of insurance in said complaint alleged to have been issued and delivered by this defendant to plaintiff, it was and is provided as follows, to wit:

“Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be void \* \* \* (b) if the inter-

est of the insured be other than unconditional and sole ownership”

and this defendant alleges that no agreement was endorsed upon or added to said policy of insurance in any way whatever waiving that provision.

And this defendant alleges that from and after the 26th day of December, 1924, up to and at the time of the fire in said complaint alleged, the plaintiff above named was not the unconditional and sole owner, or any owner, of the property in his said policy of insurance described, in this, namely:

(1) At the time of the issuance of said policy of insurance the plaintiff above named was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government, which had not then been revoked, authorizing him subject to the terms and conditions of said permit, and of the Prohibition Laws of the United States, “to manufacture wines for nonbeverage purposes on bonded winery premises, subject to Internal Revenue Laws; to taxpay and remove the same from said premises only pursuant to permits to purchase, Form 1410-A; to transfer same in bond from premises to other bonded premises only pursuant to permits to purchase, Form 1410-A; and to sell wines for sacramental or other nonbeverage purposes pursuant to permits to purchase, Forms 1412 and 1410-A, in accordance with [33] the provisions of Sections 550, 551, 552 and 553, Article V, Regulation 60,” which was and is the only permit ever issued to said plaintiff by said Commissioner authorizing him so to do.

(2) That, after the issuance and delivery of said permit to said plaintiff, and prior to the issuance and delivery by this defendant of the policy of insurance aforesaid, said plaintiff had violated, and at the time of the issuance and delivery to him by this defendant of said policy of insurance was violating, the terms and conditions of the permit aforesaid, and had manufactured, sold and otherwise disposed of, and was then manufacturing, selling, and otherwise disposing of, wine for beverage purposes.

(3) That thereafter, and on the 26th day of December, 1924, upon due and proper proceedings in that behalf had and taken by the Internal Revenue Department, Division of Liquor Permits of the United States Government, the permit so issued as aforesaid to said plaintiff was cancelled and revoked, and continued to be cancelled and revoked up to and at the time of the fire in plaintiff's complaint alleged; and at the time of said fire plaintiff was in possession of said wine and was using it for illegal purposes, and in violation of the Federal Prohibition Act, namely, for the purpose of selling and disposing of the same for beverage purposes.

And this defendant alleges that because thereof said plaintiff had no property rights in said wine, or in any part thereof, at the time of the fire in his complaint referred to under the provisions of Section 25, Title 2, of the National Prohibition Act, wherein and whereby it is provided as follows, to wit: [34]

“It shall be unlawful to have or possess any liquor or property designed for the manufac-

ture of liquor intended for use in violating this title, or which has been so used, and no property rights shall exist in any such liquor or property.”

WHEREFORE, said defendant prays that this action be dismissed as against it, and that it be granted its costs and disbursements herein.

MILLER and THORNTON,  
Attorneys for Said Defendant. [35]

State of California,  
City and County of San Francisco,—ss.

H. B. M. Miller, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant The Employers' Fire Insurance Company, a corporation, and makes this verification for and on its behalf, for the reasons (1) that this defendant has no officer in the State of California, or in the city and county of San Francisco, where affiant's offices are located, who can make said verification; (2) that this affiant is more familiar with the facts in said answer alleged than is the said defendant;

That affiant has read the foregoing answer and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated upon information or belief, and that as to those matters he believes it to be true.

H. B. M. MILLER.

Subscribed and sworn to before me this 30th day of September, 1926.

[Seal] MINNIE V. COLLINS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed October 11th, 1926. [36]

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[Title of Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above-entitled action having duly and regularly come up for trial on the 24th day of May, 1927, before the above-entitled court sitting without a jury, a jury having been theretofore waived by the parties to said action, the plaintiff appearing in person and by Roy L. Daily, his attorney, and the defendants appearing by Messrs. Miller & Thornton, their attorneys, documentary evidence having been introduced by the respective parties stipulations having been made relative to certain questions and the said matter having been submitted to the Court for its consideration and decision, and the Court, having fully considered the facts and the law makes these, its

#### FINDINGS OF FACT.

1. That all of the allegations set forth in Paragraphs I, II, III, IV, V, VI, and VII of the first cause of action contained in plaintiff's complaint on file in the above action are and each of them is true.



2. That all of the allegations set forth in Paragraphs I, II, III, IV, V and VI of the second separate and distinct cause of action, set forth in plaintiff's complaint are and each of them is true. [37]

3. That it is not true that plaintiff concealed or misrepresented from the defendants or either of them, any material facts or circumstances concerning his insurance or the subject thereof; but that it is true that plaintiff was the owner of an unrevoked permit from the Federal Prohibition Commissioner of the United States Government to manufacture and possess wine and that said permit was revoked by the Federal Prohibition Commissioner on December 26, 1924. And that it is also true that the Information filed by the United States Government charging an alleged violation of the National Prohibition Act by plaintiff was dismissed on the 6th day of October, 1924, and further that the libel proceedings filed by the United States Government against the wine owned by plaintiff, and insured by defendants, was dismissed on the 5th day of January, 1927, and no forfeiture of said wine was made to the United States Government.

4. That it is not true that said policies of insurance never went into and took effect.

5. That it is not true that plaintiff was guilty of any fraud or false swearing touching any matters relating to his insurance or touching any matter or thing whatsoever, either before or after loss.

6. That it is not true that the hazard of the property described in said properties of insurance was

materially increased by means within the control of the plaintiff or by any means.

That it is not true that plaintiff above named was not the unconditional and sole owner of the property in said policies of insurance described, or that plaintiff did not have an insurable interest therein.

### CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact and upon the admissions in the pleadings herein and upon admissions and stipulations made in open court the Court makes the following conclusions of law: [38]

1. That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant Orient Insurance Company for the sum of Five Thousand (\$5,000.00) Dollars, together with interest thereon at seven (7%) per cent per annum, from February 5, 1926, and costs of suit.

2. That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant, The Employers' Fire Insurance Company for the sum of Fifteen Hundred (\$1,500.00) Dollars, together with interest thereon at seven (7%) per cent per annum, from February 5, 1926, and costs of suit.

Let judgment be entered accordingly.

Done in open court this 17th day of August, 1927.

A. F. ST. SURE,

Judge.

[Endorsed]: Due service and receipt of a copy of the within findings of fact and conclusions of law is hereby admitted this 27th day of June, 1927.

MILLER & THORNTON,  
Attorneys for Defendants.

Filed August 17th, 1927. [39]

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[Title of Court and Cause.]

ORDER FOR JUDGMENT FOR PLAINTIFF.  
ROY L. DAILY, Esq., of San Francisco, Attorney  
for Plaintiff.

Messrs. MILLER & THORNTON of San Francisco,  
for Defendants.

ST. SURE, D. J.—It is ordered that plaintiff herein have judgment against defendants, as follows:

Against the Orient Insurance Company in the sum of Five Thousand (5,000) Dollars, together with interest thereon at seven (7) per cent from February 5, 1926, and costs of suit;

Against The Employers' Fire Insurance Company in the sum of Fifteen Hundred (1,500) Dollars, together with interest thereon from February 5, 1926, at seven (7) per cent and costs of suit.

Let plaintiff prepare findings and conclusions.

Dated: San Francisco, California, June 8, 1927.

[Endorsed]: Filed June 9, 1927. [40]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,501.

CLEMENTE ARIASI,

Plaintiff,

vs.

ORIENT INSURANCE COMPANY, a Corporation,  
and THE EMPLOYERS' FIRE INSURANCE COMPANY, a Corporation,  
Defendants.

#### JUDGMENT ON FINDINGS.

This cause came on regularly for trial upon the 24th day of May, 1927, before the Court sitting without a jury, a trial by jury having been specially waived by written stipulation filed; Roy L. Daily, Esq., appearing as attorney for plaintiff and H. B. M. Miller, and H. A. Thornton, Esqrs., appearing as attorneys for defendants; and oral and documentary evidence on behalf of the respective parties having been introduced and closed, and the cause having been submitted to the court for consideration and decision, and the Court, after due deliberation, having rendered its decision and filed its findings and ordered that judgment be entered in accordance with said findings:

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the

Court that Clemente Ariasi, plaintiff do have and recover of and from the defendant Orient Insurance Company, a corporation, [41] the sum of Five Thousand Five Hundred Thirty Six and 67/100 (\$5,536.67) Dollars, and that Clemente Ariasi, plaintiff do have and recover of and from Employers' Fire Insurance Company, a corporation, defendant, the sum of Sixteen Hundred Sixty-one and no/100 (\$1661.00) Dollars, together with his costs of suit herein expended, taxed at \$——.

Judgment entered August 17, 1927.

WALTER B. MALING,  
Clerk. [42]

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[Title of Court and Cause.]

OBJECTIONS OF DEFENDANTS TO PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND FINDINGS OF FACT.

Now come the defendants above named and object to the findings of fact heretofore submitted by the plaintiff to the Court for signing, serving and filing in said cause, upon the grounds and for the reasons as follows:

(1) That said findings do not cover all the issues raised by the pleadings in said cause and by the agreed statement of facts made by the parties at the opening of the trial of said cause;

(2) That said findings do not contain a correct statement of the issues actually covered by said pleadings and agreed statement;



and, in lieu thereof, said defendants offer and propose the following findings of fact which they submit do cover all the issues raised by the pleadings in said cause and by said agreed statement of facts, and do contain a correct statement of such issues.  
[43]

## DEFENDANTS' PROPOSED FINDINGS OF FACT.

### I.

It is true that at all the times in the complaint herein mentioned the defendant Orient Insurance Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, duly qualified to transact and transacting an insurance business in the State of California.

### II.

It is true that at all the times in the complaint herein mentioned the defendant The Employers' Fire Insurance Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, duly qualified to transact and transacting an insurance business in the State of California.

### III.

It is true that on the 23d day of October, 1924, the plaintiff was the owner and in possession of a stock of wine, manufactured and unmanufactured, and in process of manufacturing, and of materials and supplies used in manufacturing the same, con-

tained in the frame winery building on the west side of Polk Street, opposite Seventh Street, in the city of Santa Rosa, county of Sonoma, State of California, of the value at that time of a sum in excess of Sixty-five Hundred Dollars (\$6500.00).

## IV.

That it is true that on said 23d day of October, 1924, the defendant Orient Insurance Company, in consideration of the sum of Seventy and 50/100ths Dollars (\$70.50) then paid to it by [44] plaintiff, issued and delivered to plaintiff its policy of insurance insuring said plaintiff against loss or damage by fire to the property in said policy described, covering the period from the 23d day of October, 1924, to the 23d day of October, 1925, a true and correct copy of which policy is attached to and made a part of plaintiff's complaint and marked Exhibit "A."

## V.

That it is true that on the 6th day of October, 1924, the defendant Employers' Fire Insurance Company, in consideration of the sum of Twenty-one and 15/100ths Dollars (\$21.15) then paid to it by plaintiff, insured plaintiff against loss or damage by fire to the property therein described for the sum of Fifteen Hundred Dollars (\$1500.00), covering the period from the 6th day of October, 1924, at noon, to the 6th day of October, 1925, at noon, which said property was and is the same property described in the policy of insurance issued to plaintiff by the defendant Orient Insurance Company, a true and correct copy of which policy is attached to

and made a part of plaintiff's complaint and marked Exhibit "B" thereto.

## VI.

That it is true that at the time of the issuance of the policies of insurance aforesaid plaintiff was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government designated as "No. Calif. A62," which, by its terms, was to continue in force until the end of the year 1924, wherein and whereby said plaintiff was and is granted the following rights, namely: [45]

(1) To manufacture wines for nonbeverage purposes on bonded winery premises subject to Internal Revenue Laws.

(2) To tax-pay and remove same from said premises only pursuant to permits to purchase Form 1410-A.

(3) To transfer the same in bond from premises to other bonded premises only pursuant to permits to purchase Form 1410-A.

(4) To sell wines for Sacramental or other nonbeverage purposes pursuant to permits to purchase Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article 5, Regulation 60.

## VII.

That it is true that after the issuance and delivery of the policies of insurance aforesaid, and prior to the 26th day of December, 1924, an order and citation was issued by the Prohibition Depart-

ment of the United States Government, directing the plaintiff above named to appear and show cause why the permit issued to him, which is referred to in Finding No. VI hereof, should not be revoked.

VIII.

That it is true that after the issuance of said order and citation, and pending hearing thereon, and prior to the 26th day of December, 1924, the Federal Prohibition Commissioner issued to plaintiff a permit for the year 1925, bearing the same number as the permit for 1924, namely, "No. Calif. A62," while proceedings were pending before the proper prohibition authorities for the revocation of the permit aforesaid issued and delivered to plaintiff for the year 1924. [46]

IX.

That it is true that after the issuance and delivery to plaintiff of the policies of insurance in his complaint referred to, and after the issuance to plaintiff of the permit for the year 1925, referred to in the last foregoing finding, namely, on the 26th day of December, 1924, an order was made and entered by the Prohibition Department of the United States Government wherein and whereby permit No. Calif. A62, issued to plaintiff, was revoked and cancelled, which order was and is in the words and figures as follows:

"Treasury Department,  
Bureau Internal Revenue.  
Form 1430-B.

ORDER REVOKING PERMIT UNDER SECTION 9.

United States of America, Northern Judicial District of California.

461

In the Matter of the Revocation of  
Permit No. ———, issued  
to

CLEMENTE ARIASI

(Permittee)

To Clemente Ariasi,

(Name of Permittee)

601 Polk St. Santa Rosa, California.

(Address)

An order or citation having heretofore issued directing the above-named permittee to appear and show cause why the permit issued to him should not be revoked, and such order having been returned and a due hearing held thereon, now, upon all the proceedings had herein, and due deliberation having been given thereto, it is

ORDERED, that permit No. Calif. A62, issued to Clemente Ariasi be, and the same hereby is, revoked and canceled upon the following grounds, set forth on the second page of this form.

Dated this 26th day of December, 1924.

S. F. RUTTER,

(Signature of Commissioner or Director),

Q. J. B.

Federal Prohibition Director.

(Title of Officer.) [47]



I do hereby certify that on the 26th day of December, 1924, I served the foregoing notice on Clemente Ariasi at —— by (a) delivering a copy of such notice to said person or (b) by registered mail to such person at the address above.

(729987.)

Dated this 26th day of December, 1924.

A. O'HERN.

(Signature of person serving or mailing.)

NOTE: If service be on partner or officer of corporation, state such fact.

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(Title of Officer.)

Statement of grounds upon which permit is revoked and canceled.

For reason that it was decided at a recent hearing that you had illegally disposed of wine in violation of the terms of your permit and the National Prohibition Act and that you illegally possessed the same."

—and it is true that such revocation was never in any way modified, set aside or revoked.

X.

That it is true that no knowledge or notice of any kind or character was ever given by the plaintiff above named to the defendants above named, or to either of them, of the revocation referred to in Finding No. IX hereof.

XI.

That it is true that on the 26th day of June, 1925, and during the life of each of the policies of insurance in plaintiff's complaint referred to, a fire

occurred which destroyed the property in said policies described.

### XII.

That it is true that in and by each of the policies of insurance in plaintiff's complaint referred to it was and is provided as follows, to wit: [48]

“This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.”

### XIII.

That it is true that in and by each of the policies of insurance in plaintiff's complaint referred to it was and is provided as follows, to wit:

“This entire policy shall be void \* \* \*  
(b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after loss.”

### XIV.

That it is true that on the 16th day of November, 1925, the above-named plaintiff executed and furnished to each of the defendants herein an instrument in writing, signed and sworn to by him before a notary public, wherein and whereby he states, among other things, that the building wherein the wine, which is the subject of the policies of insurance issued and delivered to him by the defendants herein as in said complaint alleged, was located, was occupied at the time of the fire in said com-

plaint alleged as Bonded Winery No. 167, and for no other purpose.

XV.

That it is true that in and by each of the policies of insurance in plaintiff's complaint alleged it was and is provided as follows, to wit:

“Unless otherwise provided by agreement endorsed hereon, or added hereto, this company shall not be liable for any loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured.” [49]

XVI.

That it is true that in and by each of the policies of insurance in plaintiff's complaint alleged it was and is provided as follows, to wit:

“Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be void \* \* \* if the interest of the insured be other than unconditional and sole ownership.”

Based upon the foregoing findings of fact, the Court now finds the following:

CONCLUSIONS OF LAW.

I.

That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant Orient Insurance Company for the sum of Five Thousand Dollars (\$5,000.00), together with interest thereon at the rate of seven per cent (7%) per annum, from February 5, 1926, and costs of suit.

## II.

That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant, The Employers' Fire Insurance Company for the sum of Fifteen Hundred Dollars (\$1500.00), together with interest thereon at the rate of seven per cent (7%) per annum, from February 5, 1926, and costs of suit.

Let judgment be entered accordingly.

Done in open court this — day of —, 1927.

\_\_\_\_\_,  
Judge.

[Endorsed]: Filed Aug. 17, 1927. [50]

[Title of Court and Cause.]

PETITION OF DEFENDANTS FOR A NEW TRIAL.

Now come the defendants above named and petition the court to vacate and set aside the judgment heretofore made and entered herein, and to grant a new trial of said cause upon the following grounds, to wit:

## I.

The insufficiency of the evidence to justify the decision of the court.

## II.

That said decision is against law.

## III.

Errors in law occurring at the trial of said cause. Said petition is made and based upon, and at the

hearing thereof said defendants will rely upon, the pleadings and papers on file in said cause and upon the minutes of the [51] court which shall include the Clerk's minutes and any notes and memoranda which may have been kept by the Judge, and also upon the Reporter's transcript of his shorthand notes.

Said defendants now specify the following particulars wherein it is contended that the evidence introduced at the trial of said cause was and is insufficient to justify the decision of the court or sustain the judgment made thereon.

(1) The evidence not only wholly fails to show that at the time of the fire in plaintiff's complaint alleged he had any property rights in the property covered by his policies of insurance, but conclusively shows that he had no such rights.

(2) The evidence not only wholly fails to show that at the time of the fire in plaintiff's complaint alleged the property described in the policies of insurance in said complaint referred to was of any value, but conclusively shows that at that time it was of no value.

(3) The evidence not only fails to show that plaintiff suffered any loss by said fire, but conclusively shows that he did not suffer any loss thereby.

(4) The evidence conclusively shows that in violation of the terms of the policies of insurance in plaintiff's complaint alleged said plaintiff con-



cealed and misrepresented material facts concerning his insurance and the subject thereof.

(5) The evidence conclusively shows that in violation of the terms of the policies of insurance in plaintiff's complaint alleged said plaintiff was guilty of fraud and false swearing touching matters relating to his insurance and the subject thereof, after the fire in his complaint referred to.

(6) The evidence conclusively shows that after the issuance to plaintiff of the policies of insurance in his [52] complaint alleged there was an increase of hazard to the property covered thereby, which increase of hazard continued right up to and at the time of the fire in said complaint referred to.

(7) The evidence conclusively shows that after the issuance to plaintiff of the policies of insurance in his complaint alleged there was a change in his interest and possession of the property in said policies described, which change continued right up to and at the time of the fire in said complaint alleged.

And these defendants respectfully submit that the decision of the Court and the judgment rendered therein is against law in that there are no facts or inferences therefrom which support the findings in said cause made by the Court.

The defendants respectfully specify the following errors of law committed by the Court, which are relied upon by them:

(1) The Court erred in admitting in evidence a certified copy of the information in the case of the United States vs. Clemente Ariasi, the plaintiff above named, wherein he is charged with selling wine on his premises at Santa Rosa, California, and that said information was dismissed on the 6th day of October, 1924, and said plaintiff's bond exonerated and his sureties discharged.

(2) The Court erred in admitting in evidence a letter dated May 11th, 1926, from the Acting Federal Prohibition Administrator to the plaintiff above named, wherein it is stated that bond Form 1538 in the sum of \$5,000.00 effective April 1, 1923, may be cancelled as of March, 1926, [53] in accordance with departmental letter of May 4th, 1926, and that the United States Fidelity & Guaranty Company was furnished with a copy of that letter.

(3) The Court erred in admitting in evidence the fact that the case of the United States vs. 9365 Gallons of Wine, which was the wine in the winery of the plaintiff above named at Santa Rosa, California, was dismissed by the United States Assistant District Attorney on the 5th day of January, 1927.

(4) The Court erred in refusing to make the findings as requested by the defendants after the case had been argued and submitted.

(5) The Court erred in deciding the issues in said cause in favor of the plaintiff and against the defendants.

(6) The Court erred in entering judgment in favor of plaintiff and against the defendants.

Dated this 23d day of August, 1927.

MILLER and THORNTON,  
Attorneys for Said Defendants.

[Endorsed]: Service and receipt of a copy of the within petition for a new trial is hereby acknowledged this 23d day of August, 1927.

R. L. DAILY,  
Attorney for Plaintiff.

Filed August 27th, 1927. [54]

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[Title of Court and Cause.]

ORDER DENYING MOTION FOR NEW  
TRIAL.

ROY L. DAILY, Esq., for Plaintiff.

Messrs. MILLER & THORNTON, for Defendants.

ST. SURE, D. J.—Defendants' motion for a new trial of the above-entitled matter having been heard and submitted on authorities on October 3d, 1927, and the said motion having been duly considered,

IT IS ORDERED that the said motion for new trial be, and the same, is, hereby denied.

Dated: San Francisco, November 9, 1927.

[Endorsed]: Filed Nov. 9, 1927. [55]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING SEPTEMBER 10, 1927, FOR DEFENDANTS TO SERVE AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED by and between the parties hereto that the defendants above named may have to and including the 10th day of September, 1927, within which to serve, present and file their proposed bill of exceptions of the exceptions taken at the trial of the above-entitled matter.

Dated this 27th day of August, 1927.

(ROY L. DAILY per HELEN ALDEN.)

ROY L. DAILY per HELEN ALDEN,

Attorney for Plaintiff.

MILLER & THORNTON,

Attorneys for Defendants.

It is so ordered.

ST. SURE,

United States District Judge.

[Endorsed]: Filed Aug. 29, 1927. [55a]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND  
INCLUDING SEPTEMBER 30, 1927, FOR  
DEFENDANTS TO SERVE AND FILE  
BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED by and between the parties hereto that the defendants above named may have to and including the 30th day of September, 1927, within which to serve, present and file such proposed bill of exceptions in the above-entitled matter, as they shall deem advisable.

Dated this 8th day of September, 1927.

ROY L. DAILY,  
Attorney for Plaintiff.  
MILLER & THORNTON,  
Attorneys for Defendants.

It is so ordered.

ST. SURE,  
United States District Judge.

[Endorsed]: Filed September 8th, 1927. [56]



[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING OCTOBER 10, 1927, FOR DEFENDANTS TO PREPARE, SERVE AND FILE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED by and between the parties hereto that the defendants above named may have to and including the 10th day of October, 1927, within which to prepare, serve and present and file their proposed bill of exceptions in the above-entitled cause.

Dated this 29th day of September, 1927.

ROY L. DAILY,  
Attorney for Plaintiff.  
MILLER & THORNTON,  
Attorneys for Defendants.

It is so ordered.

ST. SURE,  
United States District Judge.

Thirty-four days previously granted by stipulation.

[Endorsed]: Filed Oct. 1, 1927. [57]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING OCTOBER 31, 1927, FOR DEFENDANTS TO PREPARE, SERVE AND FILE BILL OF EXCEPTIONS.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the defendants above named have, and there is hereby granted to them to and including the 31st day of October, 1927, within which to prepare, serve and present and file any bill of exceptions which they may deem it advisable to prepare, serve, present and file with the Court.

Dated this 20th day of October, 1927.

Time is extended until 10 days after decision on motion for new trial.

ST. SURE,

United States District Judge.

Forty-four days previously granted by stipulation.

Ten days previously granted by order of Court.

[Endorsed]: Filed Oct. 21, 1927. [58]

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[Title of Court and Cause.]

ORDER EXTENDING TERM OF COURT TO AND INCLUDING FEBRUARY 1, 1928.

GOOD CAUSE APPEARING THEREFOR, and for the allowance of the preparing, signing and

filing of a bill of exceptions in the above-entitled matter,—

IT IS HEREBY ORDERED that the term of the above-entitled court be and it is hereby extended to and including the 1st day of February, 1928.

Dated this 31st day of October, 1927.

ST. SURE,  
Judge of the U. S. District Court.

[Endorsed]: Filed October 31st, 1927. [58a]

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[Title of Court and Cause.]

DEFENDANTS' ENGROSSED BILL OF EX-  
CEPTIONS.

BE IT REMEMBERED that on the 24th day of July, 1927, the above-entitled cause came on regularly for trial before the Court sitting without a jury, a jury having been expressly waived by the parties, the Honorable A. F. St. Sure presiding, on the complaint of the plaintiff and the separate answer of each of the defendants thereto, Mr. Roy L. Daily appearing as attorney for the plaintiff and Messrs. Miller and Thornton appearing as attorneys for the defendants; whereupon the following proceedings were had and taken.

It was stated to the Court by the attorneys for the respective parties that they would stipulate to an

agreed statement of facts to be entered in the record, and that no oral evidence would be offered.

Mr. Daily then stated to the Court, in support of the case of the plaintiff, that the following facts were agreed to, namely:

- (1) That at all the times in the complaint stated [59] each of the defendants was and still is an insurance company as in the complaint in said action alleged;
- (2) That policies of insurance were issued and delivered to plaintiff by the defendants respectively, as in said complaint alleged.

These policies were introduced in evidence as Plaintiff's Exhibits 1 and 2, and in each thereof there are contained the following provisions:

- (a) "The company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of loss."

Line 15, page 1 of Policies.

- (b) "This entire policy shall be void (a) if the insured has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject thereof; and (b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

Lines 44, 45 and 46, page 2 of Policies.

- (c) "Unless otherwise provided by agreement endorsed hereon or added hereto this entire

policy shall be void \* \* \* (b) if the interest of the insured be other than unconditional and sole ownership.”

Lines 47, 48 and 49, page 2 of Policies.

- (d) “Unless otherwise provided by agreement endorsed hereon or added hereto this company shall not be liable for loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured.”

Lines 53, 54 and 55, page 2 of Policies.

- (e) “Unless otherwise provided by agreement endorsed hereon or added hereto this company shall not be liable for loss or damage occurring \* \* \* (g) while the interest in, title to or possession of the subject of insurance is changed excepting: (1) By the death of the insured; (2) a change of occupancy of building without material increase of hazard; and (3) transfer by one or more several co-partners or co-owners to others.”

Lines 53, 54, 63, 64 and 65, page 2 of Policies.

- (f) “No suit or action on this policy for a recovery of any claim thereunder shall be sustainable until after full compliance by the insured with all the foregoing requirements.”

Lines 147, 148 and 149, page 2 of Policies. [60]



- (3) That at the time of the issuance and delivery by defendants to plaintiff of said policies of insurance plaintiff was the owner and in possession of the property insured thereby, which was then of the value of \$19,537.50.
- (4) That thereafter, and within the life of said policies, namely, on the 26th day of June, 1925, a fire occurred which totally destroyed the property in said policies described.
- (5) That thereafter, and within the time required by said policies, plaintiff furnished to each of said defendants a proof of loss signed and sworn to by him in accordance with the terms and provisions of said policies.

These proofs of loss were introduced in evidence as Plaintiff's Exhibits 3 and 4 and in each thereof it is stated as follows:

- (a) That his interest in the property covered by his said policies of insurance, at the time of the fire, was absolute;
- (b) That the cash value of the property covered by said policies of insurance at the time of the fire, was Nineteen Thousand Five Hundred and Thirty-seven Dollars and Fifty Cents (\$19,537.50);
- (c) That since issuance of said policies there was no change in the title, use, occupation, location or possession of the property insured thereby;
- (d) That the building in which the property insured was located, was occupied at the time

of the fire by the plaintiff as bonded winery #167, and for no other purpose;

(e) That plaintiff's loss by reason of the destruction by fire of the property in his said policies described, was and is the sum of Nineteen Thousand Five Hundred and Thirty-seven Dollars and Fifty Cents (\$19,537.50); and in each thereof plaintiff claimed from the defendant referred to therein the full amount of insurance.

(6) That defendants refuse to pay to plaintiff the amount of loss claimed by him in said policies, namely, the full amount of insurance in said policies stated, and more than ninety days after said plaintiff furnished said proofs of loss to said defendants this action was instituted by him against said defendants. [61]

Mr. Miller then stated to the Court, in support

Mr. Miller then stated to the Court, in support of the case of the defendants, that the following facts were agreed to, namely:

(1) That at the time of the issuance and delivery to plaintiff of the policies of insurance in his complaint alleged he was the owner of a permit from the Prohibition Department of the United States Government numbered "Calif. A62," wherein and whereby plaintiff was given the following rights:

(a) To manufacture wines for nonbeverage purposes on bonded winery premises subject to Internal Revenue Laws.

- (b) To tax-pay and remove same from said premises only pursuant to permits to purchase Form 1410-A.
  - (c) To transfer the same in bond from premises to other bonded premises only pursuant to permits to purchase Form 1410-A.
  - (d) To sell wines for Sacramental or other non-beverage purposes pursuant to permits to purchase Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article 5, Regulation 60.
- (2) That thereafter, and prior to the fire in plaintiff's complaint alleged, proceedings were instituted against the plaintiff above named for the cancellation and revocation of said permit on the ground that he had violated the terms thereof and the provisions of the National Prohibition Act.
- (3) That thereafter, and prior to the 26th day of December, 1924, the Prohibition Department of the United States Government issued and delivered to plaintiff a permit for the year 1925, numbered "Calif. A62," being the same number as his permit for 1924, wherein and whereby he was given the same rights covering the same property as are given and covered in said permit for 1924.
- (4) That thereafter, and on the 26th day of December, 1924, an order was made and entered

in the proceedings so instituted against plaintiff as aforesaid for the cancellation of his permit for the year 1924, wherein and whereby permit "Calif. A62" is cancelled on the ground that plaintiff had illegally disposed of wine in violation of the terms of his permit and the National Prohibition Act, and that he illegally possessed the same.

Said order of revocation was introduced in evidence as Defendants' [62] Exhibit "A," a true and correct copy of which appears on pages 11 and 12 hereof.

Mr. Daily then offered in rebuttal a certified copy of an information in the case of United States vs. Clemente Ariasi, wherein and whereby the plaintiff above named is charged with selling wine in his premises at Santa Rosa and that said cause was dismissed on the 6th day of October, 1924, plaintiff's bond exonerated and his sureties discharged. To this offer, defendants objected on the ground that it was and is incompetent, irrelevant and immaterial; that it does not show that there was any trial or any finding in the case; that the plaintiff should legally own the wine covered by his policies under a permit from the Prohibition Department of the United States Government; that his permit had been revoked and that there was no ownership in him and that, therefore, as to him there was no value in said property.

This objection was overruled by the Court and said papers were admitted in evidence as Plaintiff's Exhibit No. 5. To this ruling defendants excepted

and they now assign said ruling as error and they hereby designate said exception as

EXCEPTION No. I.

Mr. Daily then offered in evidence the papers in the case of the United States vs. 9365 Gallons of Wine, being the same wine referred to in the winery of the plaintiff at Santa Rosa, as well as being the same wine which was insured by defendants, the same wine referred to in the information, Plaintiff's Exhibit 5, and the same wine referred to in Plaintiff's Exhibit 6, which was heard at Sacramento January 5th, 1927, before your Honor and which case was on motion of the Assistant United States Attorney dismissed on that date.

To this offer defendants objected on the ground that it [63] was and is incompetent, irrelevant and immaterial; that said dismissal was made more than a year after the fire in plaintiff's complaint referred to. [64]

This objection was overruled by the Court and said papers admitted in evidence as Plaintiff's Exhibit No. 6.

To this ruling defendants excepted and they now assign said ruling as error and hereby designate said exception as

EXCEPTION No. II.

Mr. Daily then offered in evidence a certified copy of a letter written to plaintiff by the Acting Federal Prohibition Commissioner, dated May 11th, 1926, wherein and whereby it is stated that Bond Form 1538 in the sum of \$5,000.00, effective April 1, 1923, was cancelled as of March, 1926, and that



notice to that effect had been given to the United States Fidelity and Guaranty Company.

To this evidence, defendants objected on the ground that it was and is incompetent, irrelevant and immaterial; that it is only a part of the transaction.

This objection was overruled by the Court and said letter was admitted in evidence as Plaintiff's Exhibit No. 7, to which ruling defendants excepted. Said ruling is hereby designated as error and said exception is hereby designated as

#### EXCEPTION No. III.

The case was then argued by the attorneys for the respective parties and submitted to the Court for decision, and thereafter and on the 9th day of June, 1927 said Court rendered its decision, without the presence of the attorneys for either of the parties to said cause, in favor of the plaintiff and against the defendants as prayed for in plaintiff's complaint, and in said decision directed the attorney for plaintiff to prepare findings of fact and conclusions of law in accordance therewith.

This action of the Court said defendants now assign as error [65] on the ground that there was no evidence of any kind or character introduced at the trial of said cause which in any way supports or tends to support said decision, and they ask that they be allowed an exception thereto and that said exception may be designated as

#### EXCEPTION No. IV.

Thereafter the attorney for plaintiff prepared

findings of fact and conclusions of law which were submitted to the Court and served upon attorneys for the defendants, in the words and figures as follows:

“FINDINGS OF FACT AND CONCLUSIONS  
OF LAW.

The above-entitled action having duly and regularly come up for trial on the 24th day of May, 1927, before the above-entitled court sitting without a jury, a jury having been theretofore waived by the parties to said action, the plaintiff appearing in person and by Roy L. Daily, his attorney, and the defendants appearing by Messrs. Miller & Thornton, their attorneys, documentary evidence having been introduced by the respective parties stipulations having been made relative to certain questions and the said matter having been submitted to the Court for its consideration and decision, and the Court, having fully considered the facts and the law makes these, its

FINDINGS OF FACT.

1. That all of the allegations set forth in Paragraphs I, II, III, IV, V, VI and VII of the first cause of action contained in plaintiff's complaint on file in the above action are and each of them is true.

2. That all of the allegations set forth in Paragraphs I, II, III, IV, V and VI of the second separate and distinct cause of action, set forth in plaintiff's complaint are and each of them is true.

3. That it is not true that plaintiff concealed or misrepresented from the defendants or either of them, any material facts or circumstances concerning his insurance or the subject thereof; but that it is true that plaintiff was the owner of an unrevoked permit from the Federal Prohibition Commissioner of the United States Government to manufacture and possess [66] wine and that said permit was revoked by the Federal Prohibition Commissioner on December 26, 1924. And that it is also true that the Information filed by the United States Government charging an alleged violation of the National Prohibition Act by plaintiff was dismissed on the 6th day of October, 1924, and further that the Libel proceedings filed by the United States Government against the wine owned by plaintiff, and insured by defendants, was dismissed on the 5th day of January, 1927, and no forfeiture of said wine was made to the United States Government.

4. That it is not true that said policies of insurance never went into and took effect.

5. That it is not true that plaintiff was guilty of any fraud or false swearing touching any matters relating to his insurance or touching any matter or thing whatsoever, either before or after loss.

6. That it is not true that the hazard of the property described in said properties of insurance was materially increased by means within the control of the plaintiff or by any means.

That it is not true that plaintiff above named was not the unconditional and sole owner of the

property in said policies of insurance described, or that plaintiff did not have an insurable interest thereon.

### CONCLUSIONS OF LAW.

Based upon the foregoing findings of fact and upon the admissions in the pleadings herein and upon admissions and stipulations made in open court the Court makes the following conclusions of law:

1. That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant Orient Insurance Company for the sum of Five Thousand (\$5,000.00) Dollars, together with interest thereon at seven (7%) per cent per annum, from February 5, 1926, and costs of suit.

2. That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant, The Employers' Fire Insurance Company for the sum of Fifteen Hundred (\$1,500.00) Dollars, together with interest thereon at seven (7%) per cent per annum, from February 5, 1926, and costs of suit.

Let judgment be entered accordingly.

Done in open court this 17th day of August, 1927.

A. F. ST. SURE,  
Judge." [67]

Thereafter, and within the time provided by law, the attorneys for the defendants prepared their objections to said findings of fact and conclusions of law, and special findings of fact and conclusions of law which they requested the Court to sign, which were by them delivered to the Court and

served upon the attorney for the plaintiff, in the words and figures as follows:

“OBJECTIONS OF DEFENDANTS TO PLAINTIFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY DEFENDANTS.

Now come the defendants above named and object to the findings of fact heretofore submitted by the plaintiff to the Court for signing, serving and filing in said cause, upon the grounds and for the reasons as follows:

(1) That said findings do not cover all the issues raised by the pleadings in said cause and by the Agreed Statement of Facts made by the parties at the opening of the trial of said cause;

(2) That said findings do not contain a correct statement of the issues actually covered by said pleadings and Agreed Statement;

and, in lieu thereof, said defendants offer and propose the following findings of fact which they submit do cover all the issues raised by the pleadings in said cause and by said Agreed Statement of Facts, and do contain a correct statement of such issues.

DEFENDANTS’ PROPOSED FINDINGS OF FACT.

I.

It is true that at all the times in the complaint herein mentioned the defendant Orient Insurance



Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, duly qualified to transact and transacting an insurance business in the State of California.

## II.

It is true that at all the times in the complaint herein mentioned the defendant The Employers' Fire Insurance Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, duly qualified to transact and transacting an insurance business in the State of California. [68]

## III.

It is true that on the 23d day of October, 1924, the plaintiff was the owner and in possession of a stock of wine, manufactured and unmanufactured, and in process of manufacturing, and of materials and supplies used in manufacturing the same, contained in the frame winery building on the West side of Polk Street, opposite West Seventh Street, in the City of Santa Rosa, County of Sonoma, State of California, of the value at that time of a sum in excess of Sixty-five Hundred Dollars (\$6,500.00).

## IV.

That it is true that on said 23d day of October, 1924, the defendant Orient Insurance Company, in consideration of the sum of Seventy and 50/100ths Dollars (\$70.50) then paid to it by plaintiff, issued and delivered to plaintiff its policy of insurance insuring said plaintiff against loss or damage by fire

to the property in said policy described, covering the period from the 23d day of October, 1924, to the 23d day of October, 1925, a true and correct copy of which policy is attached to and made a part of plaintiff's complaint and marked Exhibit 'A.'

V.

That it is true that on the 6th day of October, 1924, the defendant Employers' Fire Insurance Company, in consideration of the sum of Twenty-one and 15/100ths Dollars (\$21.15) then paid to it by plaintiff, insured plaintiff against loss or damage by fire to the property therein described for the sum of Fifteen Hundred Dollars (\$1500.00), covering the period from the 6th day of October, 1924, at noon, to the 6th day of October, 1925, at noon, which said property was and is the same property described in the policy of insurance issued to plaintiff by the defendant Orient Insurance Company, a true and correct copy of which policy is attached to and made a part of plaintiff's complaint and marked Exhibit 'B' thereto.

VI.

That it is true that at the time of the issuance of the policies of insurance aforesaid plaintiff was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government designated as 'No. Calif. A62,' which, by its terms, was to continue in force until the end of the year 1924, wherein and whereby said plaintiff was and is granted the following rights, namely:

- (1) To manufacture wines for nonbeverage

purposes on bonded winery premises subject to Internal Revenue Laws;

(2) To tax-pay and remove same from said premises only pursuant to permits to purchase Form 1410-A; [69]

(3) To transfer the same in bond from premises to other bonded premises only pursuant to permits to purchase Form 1410-A;

(4) To sell wines for Sacramental or other nonbeverage purposes pursuant to permits to purchase Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article 5, Regulation 60.

#### VII.

That it is true that after the issuance and delivery of the policies of insurance aforesaid, and prior to the 26th day of December, 1924, an order and citation was issued by the Prohibition Department of the United States Government, directing the plaintiff above named to appear and show cause why the permit issued to him, which is referred to in Finding No. VI hereof, should not be revoked.

#### VIII.

That it is true that after the issuance of said order and citation, and pending hearing thereon, and prior to the 26th day of December, 1924, the Federal Prohibition Commissioner issued to plaintiff a permit for the year 1925, bearing the same number as the permit for 1924, namely, 'No. Calif. A62,' while proceedings were pending before the proper Prohibition Authorities for the revocation

of the permit aforesaid issued and delivered to plaintiff for the year 1924.

IX.

That it is true that after the issuance and delivery to plaintiff of the policies of insurance in his complaint referred to, and after the issuance to plaintiff of the permit for the year 1925, referred to in the last foregoing Finding, namely, on the 26th day of December, 1924, an order was made and entered by the Prohibition Department of the United States Government wherein and whereby permit No. Calif. A62, issued to plaintiff, was revoked and canceled, which order was and is in the words and figures as follows:

'Treasury Department,  
Bureau Internal Revenue.  
Form 1430-B.

ORDER REVOKING PERMIT UNDER SECTION 9.

United States of America, Northern Judicial District of California.

461.

In the Matter of the Revocation of  
Permit No. —, Issued  
To

CLEMENTE ARIASI  
(Permittee) [70]

To Clemente Ariasi,  
(Name of Permittee)

601 Polk St., Santa Rosa, California.  
(Address)

An order or citation having heretofore issued di-

recting the above-named permittee to appear and show cause why the permit issued to him should not be revoked, and such order having been returned and a due hearing held thereon, now, upon all the proceedings had herein, and due deliberation having been given thereto, it is

ORDERED, that permit No. Calif. A62, issued to Clemente Ariasi be, and the same hereby is, revoked and canceled upon the following grounds, set forth on the second page of this form.

Dated this 26th day of December, 1924.

S. F. RUTTER,

(Signature of Commissioner of Director.)

Q. J. B.,

Federal Prohibition Director.

(Title of Officer.)

I do hereby certify that on the 26th day of December, 1924, I served the foregoing notice on Clemente Ariasi at —— by (a) delivering a copy of such notice to said person or (b) by registered mail to such person at the address above.

(729987.)

Dated this 26th day of December, 1924.

A. O'HERN.

(Signature of person serving or mailing.)

NOTE: If service be on partner or officer of corporation, state such fact.

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(Title of officer.)



Statement of grounds upon which permit is revoked and canceled.

For the reason that it was decided at a recent hearing that you had illegally disposed of wine in violation of the terms of your permit and the National Prohibition Act and that you illegally possessed the same.'

and it is true that such revocation was never in any way modified, set aside or revoked.

X.

That it is true that no knowledge or notice of any kind or character was ever given by the plaintiff above named to the defendants above named, or to either of them, of the revocation referred to in Finding No. IX hereof. [71]

XI.

That it is true that on the 26th day of June, 1925, and during the life of each of the policies of insurance in plaintiff's complaint referred to, a fire occurred which destroyed the property in said policies described.

XII.

That it is true that in and by each of the policies of insurance in plaintiff's complaint referred to it was and is provided as follows, to wit:

'This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.'

XIII.

That it is true that in and by each of the policies

of insurance in plaintiff's complaint referred to it was and is provided as follows, to wit:

'This entire policy shall be void \* \* \*  
(b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after loss.'

#### XIV.

That it is true that on the 16th day of November, 1925, the above named plaintiff executed and furnished to each of the defendants herein an instrument in writing, signed and sworn to by him before a Notary Public, wherein and whereby he stated, among other things, that the building wherein the wine, which is the subject of the policies of insurance issued and delivered to him by the defendants herein as in said complaint alleged, was located, was occupied at the time of the fire in said complaint alleged as Bonded Winery No. 167, and for no other purpose.

#### XV.

That it is true that in and by each of the policies of insurance in plaintiff's complaint alleged it was and is provided as follows, to wit:

'Unless otherwise provided by agreement endorsed herein or added hereto, this company shall not be liable for any loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured.' [72]

XVI.

That it is true that in and by each of the policies of insurance in plaintiff's complaint alleged it was and is provided as follows, to wit:

'Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be void \* \* \* if the interest of the insured be other than unconditional and sole ownership.'

Based upon the foregoing Findings of Fact, the Court now finds the following:

CONCLUSIONS OF LAW.

I.

That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant Orient Insurance Company for the sum of Five Thousand Dollars (\$5,000.00), together with interest thereon at the rate of seven per cent (7%) per annum, from February 5, 1926, and costs of suit.

II.

That said plaintiff, Clemente Ariasi, is entitled to judgment against defendant, The Employers' Fire Insurance Company for the sum of Fifteen Hundred Dollars (\$1500.00), together with interest thereon at the rate of seven per cent (7%) per annum, from February 5, 1926, and costs of suit.

Let judgment be entered accordingly.

Done in open court this — day of —, 1927.

\_\_\_\_\_,  
Judge.' "

Thereafter, and at the hearing before the Court of

the matter of the settlement of the findings in said cause, the attorneys for the defendants delivered to the Court and to the attorney for the plaintiff new findings of fact and conclusions of law which they requested the Court to sign in the place of those theretofore presented by them, on the ground that the first findings presented by them were not as complete as they should be [73] and that the ones secondly delivered to the Court, and to the attorney for the plaintiff, were in all respects true, complete and accurate, a true and correct copy of which said findings of fact and conclusions of law is as follows:

**“OBJECTIONS OF DEFENDANTS TO PLAINTIFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY DEFENDANTS.**

Now come the defendants above named and object to the Findings of Fact heretofore submitted by the plaintiff to the Court for signing, serving and filing in said cause, upon the grounds and for the reasons as follows:

- (1) That said findings do not cover all the issues raised by the pleadings in said cause and by the Agreed Statement of Facts made by the parties at the opening of the trial of said cause;
- (2) That said findings do not contain a correct statement of the issues actually covered by said pleadings and Agreed Statement;

and, in lieu thereof, said defendants offer and propose the following Findings of Fact which they submit do cover all the issues raised by the pleadings in said cause and by said Agreed Statement of Facts, and do contain a correct statement of such issues.

DEFENDANTS' PROPOSED FINDINGS OF  
FACT.

I.

It is true that at all the times in the complaint herein mentioned the defendant Orient Insurance Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, duly qualified to transact and transacting an insurance business in the State of California.

II.

It is true that at all the times in the complaint herein mentioned the defendant The Employers' Fire Insurance Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, duly qualified to transact and transacting an insurance business in the State of California. [74]

III.

It is true that on the 23d day of October, 1924, the plaintiff was the owner and in possession of a stock of wine, manufactured and unmanufactured, and in process of manufacturing, and of materials and supplies used in manufacturing the same, contained in the frame winery building on the West



side of Polk Street, opposite West Seventh Street, in the City of Santa Rosa, County of Sonoma, State of California, of the value at that time of Nineteen Thousand Five Hundred and Thirty-seven Dollars and Fifty Cents (\$19,537.50), and that it continued to be of that value up to and at the time of the fire in plaintiff's complaint alleged.

#### IV.

That it is true that on said 23rd day of October, 1924, the defendant Orient Insurance Company, in consideration of the sum of Seventy and 50/100ths Dollars (\$70.50) then paid to it by plaintiff, issued and delivered to plaintiff its policy of insurance insuring said plaintiff against loss or damage by fire to the property in said policy described, covering the period from the 23rd day of October, 1924, to the 23rd day of October, 1925, a true and correct copy of which Policy is attached to and made a part of plaintiff's complaint and marked Exhibit 'A.'

#### V.

That it is true that on the 6th day of October, 1924, the defendant Employers' Fire Insurance Company, in consideration of the sum of Twenty-one and 15/100ths Dollars (\$21.15) then paid to it by plaintiff, insured plaintiff against loss or damage by fire to the property therein described for the sum of Fifteen Hundred Dollars (\$1500.00), covering the period from the 6th day of October, 1924, at noon, to the 6th day of October, 1925, at noon, which said property was and is the same property described in

the policy of insurance issued to plaintiff by the defendant Orient Insurance Company, a true and correct copy of which policy is attached to and made a part of plaintiff's complaint and marked Exhibit 'B' thereto.

VI.

That it is true that in and by each of the policies of insurance in plaintiff's complaint referred to it was and is provided as follows, to wit:

'This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.'

VII.

That it is true that in and by each of the policies of insurance in plaintiff's complaint referred to it was [75] and is provided as follows, to wit:

'This entire policy shall be void \* \* \*  
(b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after loss.'

VIII.

That it is true that in and by each of the policies of insurance in plaintiff's Complaint alleged it was and is provided as follows, to wit:

'Unless otherwise provided by agreement endorsed hereon or added hereto, this company shall not be liable for any loss or damage occur-

ring (a) while the hazard be materially increased by any means within the control of the insured.'

#### IX.

That it is true that in and by each of the policies of insurance in plaintiff's complaint alleged it was and is provided as follows, to wit:

'Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be void \* \* \* if the interest of the insured be other than unconditional and sole ownership.'

#### X.

That it is true that in and by each of the policies of insurance in plaintiff's complaint alleged, there was and is provided as follows, to wit:

'No suit or action on this policy for the recovery of any claim thereunder shall be sustainable until after full compliance by the insured with all the foregoing requirements' and that that provision follows the provisions of said policy, which are quoted in Findings VI, VII, VIII and IX, above.

#### XI.

That it is true that at the time of the issuance of the policies of insurance aforesaid plaintiff was the owner and in possession of a permit from the Federal Prohibition Commissioner of the United States Government designated as 'No. Calif. A62,'

which, by its terms, was to continue in force until the end of the year 1924, wherein and whereby said plaintiff was and is granted the following rights, namely: [76]

- (1) To manufacture wines for non-beverage purposes on bonded winery premises subject to Internal Revenue Laws;
- (2) To tax-pay and remove same from said premises only pursuant to permits to purchase Form 1410-A;
- (3) To transfer the same in bond from premises to other bonded premises only pursuant to permits to purchase Form 1410-A;
- (4) To sell wines for Sacramental or other non-beverage purposes pursuant to permits to purchase Forms 1412 and 1410-A, in accordance with the provisions of Sections 550, 551, 552 and 553, Article 5, Regulation 60.

## XII.

That it is true that after the issuance and delivery of the policies of insurance aforesaid, and prior to the 26th day of December, 1924, an order and citation was issued by the Prohibition Department of the United States Government, directing the plaintiff above named to appear and show cause why the permit issued to him, which is referred to in Finding No. XI hereof, should not be revoked.

## XIII.

That it is true that after the issuance of said order and citation, and pending hearing thereon,

and prior to the 26th day of December, 1924, the Federal Prohibition Commissioner issued to plaintiff a permit for the year 1922, bearing the same number and covering the same property as the permit for 1924, namely 'No. Calif. A62,' while proceedings were pending before the proper Prohibition Authorities for the revocation of the permit aforesaid issued and delivered to plaintiff for the year 1924.

#### XIV.

That it is true that after the issuance and delivery to plaintiff of the policies of insurance in his complaint referred to and after the issuance to plaintiff of the permit for the year 1925, referred to in the last foregoing Finding, namely, on the 26th day of December, 1924, an order was made and entered by the Prohibition Department of the United States Government wherein and whereby permit No. Calif. A62, issued to plaintiff, was revoked and cancelled, which order was and is in the words and figures as follows:

'Treasury Department,  
Bureau Internal Revenue,  
Form 1430-B. [77]



ORDER REVOKING PERMIT UNDER SECTION 9.

United States of America, Northern Judicial District of California.

461.

In the Matter of the revocation of Permit No. —, Issued.

To

CLEMENTE ARIASI

(Permittee)

To Clemente Ariasi

(Name of Permittee)

601 Polk St. Santa Rosa, California.

(Address)

An order or citation having heretofore issued directing the above-named permittee to appear and show cause why the permit issued to him should not be revoked, and such order having been returned and a due hearing held thereon, now, upon all the proceedings had herein, and due deliberation having been given thereto, it is

ORDERED, that permit No. Calif. A62, issued to Clemente Ariasi be, and the same hereby is, revoked and canceled upon the following grounds, set forth on the second page of this form.

Dated this 26th day of December, 1924.

S. F. RUTTER.

(Signature of Commissioner or Director.)

Q. J. B.

Federal Prohibition Director.

(Title of Officer.)

I do hereby certify that on the 26th day of December, 1924, I served the foregoing notice on Clemente Ariasi at ——— by (a) delivering a copy of such notice to said person or (b) by registered mail to such person at the address above.

(729987)

Dated this 26th day of December, 1924.

A. O'HERN.

(Signature of person serving or mailing.)

NOTE: If service be on partner or officer of corporation, state such fact.

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(Title of Officer.)

Statement of grounds upon which permit is revoked and canceled.

For reason that it was decided at a recent hearing that you had illegally disposed of wine in violation of the terms of your permit and the National Prohibition Act and that you illegally possessed the same,' [78] and it is true that such revocation was never in any way modified, set aside or revoked.

XV.

That it is true that no knowledge or notice of any kind or character was ever given by the plaintiff

above named to the defendants above named, or to either of them, of the revocation referred to in Finding No. IX hereof.

XVI.

That it is true that on the 6th day of October, 1924, and prior to the revocation referred to in Finding XIV hereof, a criminal action, instituted by the United States against Clemente Ariasi, the plaintiff herein, wherein he was charged with selling of wine on his premises in Santa Rosa, California, which are described in the complaint herein, was dismissed, and the bond given by him therein exonerated, and the sureties on said bond discharged.

XVII.

That it is true that on the 6th day of November, 1925, the plaintiff above named executed and furnished to each of the defendants herein, an instrument in writing, signed and sworn to by him before a Notary Public, wherein and whereby he states among other things as follows:

- (1) That his interest in the property covered by his said policies of insurance, at the time of the fire, was absolute;
- (2) That the cash value of the property covered by said policies of insurance at the time of the fire, was Nineteen Thousand Five Hundred and Thirty-seven Dollars and fifty cents (\$19537.50);
- (3) That since the issuance of said policies there was no change in the title, use, occupation,

location or possession of the property insured thereby;

- (4) That the building in which the property insured was located, was occupied at the time of the fire by the plaintiff as bonded winery #167, and for no other purpose;
- (5) That plaintiff's loss by reason of the destruction by fire of the property in his said policies described, was and is the sum of Nineteen Thousand Five Hundred and thirty-seven Dollars and Fifty Cents (\$19-537.50). [79]

#### XVIII.

That it is true that thereafter and on the 11th day of May, 1926, the acting Federal Prohibition Administrator wrote a letter to the plaintiff above named, as follows, to wit:

'You are advised that bond Form 1538, in the sum of Five Thousand Dollars, effective April 1, 1923, may be canceled as of March, 1926. This is in accordance with departmental letter of May 4, 1926. United States Fidelity and Guaranty Company is being furnished with a copy of this letter.'

#### XIX.

That it is true that thereafter and on the 5th day of January, 1927, the case of United States *versus* 9365 gallons of wine, being wine of plaintiff above named, in his winery in Santa Rosa, California, was dismissed on motion of A. E. Sheets, Assistant United States Attorney.

Based upon the foregoing Findings of Fact, now finds the following:

## CONCLUSIONS OF LAW.

### I.

That the plaintiff above named, at the time of the fire in his complaint alleged, was the unconditional and sole owner of the property described in the policies of insurance therein referred to.

### II.

That the value of said property was in no way depreciated or lessened by reason of any of the facts in the foregoing Findings stated.

### III.

That plaintiff's loss by reason of said fire was the sum of Nineteen Thousand Five Hundred thirty-seven Dollars and Fifty Cents (\$19537.50), which said sum is in excess of the total amount of his insurance.

### IV.

That the plaintiff above named was not, and is not guilty of misrepresentation or concealment by reason of anything stated by him in the proofs of loss by him furnished to the defendants above named, or otherwise.

### V.

That the plaintiff above named, was not, and is not, guilty of fraud or false swearing by reason of anything [80] stated by him in the proofs of loss, by him furnished to defendants above named, or otherwise.



## VI.

That the hazard to the property in plaintiff's policies described was not increased by reason of any of the matters, facts or things in the foregoing Findings contained, or otherwise, either by means within his control, or otherwise.

## VII.

That plaintiff is entitled to Judgment against defendant, Orient Insurance Company, for the sum of Five Thousand Dollars (\$5000.00), together with interest thereon at the rate of 7% per annum, from February 5th, 1926, and costs of suit.

## VIII.

That plaintiff is entitled to Judgment against defendant, Employers' Fire Insurance Company, for the sum of Fifteen Hundred Dollars (\$1500.00) together with interest thereon at the rate of 7% per annum, from the 5th day of February, 1926, and costs of suit.

Let judgment be entered accordingly.

Done in open court this — day of August, 1927."

Whereupon, the Court heard the argument of the attorney for the plaintiff in support of the findings of fact and conclusions of law made by him, and the argument of the attorneys for the defendants in support of the objections, findings of fact, and conclusions of law presented by them, and last above quoted, at the conclusion of which argument the matter of the settlement of the findings of fact and

conclusions of law in said cause was submitted to the Court for determination.

Thereafter, and on the 17th day of August, 1927, without the presence of the attorneys for either of the parties to said cause, the Court signed and filed the findings of fact and conclusions of law presented to it by the attorney for the [81] plaintiff and refused to sign and cause to be filed the findings of fact and conclusions of law presented to it by the defendants, which action upon the part of said court said defendants now assign as error, and respectfully request that they be allowed an exception to such refusal and that such exception may be designated herein as

EXCEPTION No. V.

That said defendants now assign as error the action of the Court in signing the following specific findings of fact and causing the same to be filed, for the reasons as to each thereof specifically stated below:

- (1) As to that portion of Finding No. 1, wherein the court finds that the allegation in paragraph III of the first cause of action in plaintiff's complaint alleged, to the effect that the property in plaintiff's policies of insurance described continued to be of the value of \$19,537.50 up to and at the time of its destruction by the fire in said complaint alleged, is true,—it was stipulated by and between both parties before the commencement of the trial, that the value of the wine

was admitted to be of the value as was stated in the complaint if the Court found that there was any value at all. The question of whether or not the wine was of the value as set forth in the complaint was not at issue, the only question being whether or not it had any value, and if the Court found that the wine had any value it was admitted that it was the value as set forth in the complaint; while the evidence introduced at the trial of said cause does show without any dispute whatever the following facts:

- (a) That at the time of the issuance and delivery of the policies of insurance in plaintiff's complaint referred to he was the owner of a permit issued and delivered to him by the Prohibition Department of the United States Government covering the year 1924 numbered "Calif. A62," authorizing him to possess, use and dispose of the property in said policies described, subject to the terms and conditions of the National Prohibition Act.
- (b) That thereafter, and on the 6th day of October, 1924, the Prohibition Department of the United States Government issued and delivered to said plaintiff a permit for the year 1925, covering the same property

and giving to plaintiff the same rights as were covered and given to to him in and by said permit for the year 1924, and bearing the same number as his permit for 1924, namely, number "Calif. A62." [82]

- (c) That thereafter, and on the 26th day of December, 1924, upon the hearing of an order to show cause, theretofore served upon said plaintiff, directing him to appear and show cause why the permit issued to him should not be canceled and revoked, it was ordered "that permit No. Calif. A62 issued to Clemente Ariasi be and the same hereby is revoked and canceled" on the ground that he had illegally disposed of wine in violation of the terms of his permit and the National Prohibition Act and that he illegally possessed the same.

And said defendants now assign the making of that portion of Finding No. 1, above referred to, as error, and respectfully request that they be allowed an exception to the making of the same by the court and that such exception may be designated herein as

EXCEPTION No. VI.

- (2) As to that portion of Finding No. 1, wherein the court finds that the allegation in para-

graph 5 of the first cause of action in plaintiff's complaint alleged, to the effect that at the time of the fire in said complaint referred to he was the owner of the property in his policies described, is true,—there was no evidence of any kind or character introduced at the trial of said cause which supports or tends to support the same; while the evidence introduced at the trial of said cause does show without any dispute all the facts set forth and stated in paragraphs a, b and c on page 23 hereof.

And said defendants now assign the making of that portion of Finding No. 1, which is referred to in the paragraph hereof immediately preceding this, as error, and respectfully request that they be allowed an exception to the making thereof by the court, and that such exception may be designated herein as

#### EXCEPTION No. VII.

- (3) As to the portion of said Finding No. 1, wherein the court finds that the allegation in paragraph 6 of the first cause of action in plaintiff's complaint alleged, to the effect that the plaintiff suffered a loss because of the fire therein referred to in excess of \$5,000.00, namely in the sum of \$19,537.50, and that the actual cash value of the interest of the plaintiff in the property in his said policies described at the time of said loss, and at all times since said loss, was in ex-



cess of \$5,000.00, is true,—it was stipulated by and between both parties before the commencement of the trial, that the value of the wine was admitted to be of the value as was stated in the complaint if the [83] Court found that there was any value at all. The question of whether or not the wine was of the value as set forth in the complaint was not at issue, the only question being whether or not it had any value, and if the Court found that the wine had any value it was admitted that it was the value as set forth in the complaint; while the evidence introduced at the trial of said cause does show, without any dispute whatever, all the facts set forth and stated in paragraphs a, b and c on page 23 hereof.

And said defendants now assign the making of that portion of Finding No. 1, which is referred to in the paragraph immediately preceding this, as error, and respectfully request that they be allowed an exception to the making thereof by the Court, and that such exception may be designated herein as

#### EXCEPTION No. VIII.

- (4) As to that portion of said Finding No. 1, wherein the court finds that the allegation in paragraph 7 of the first cause of action in plaintiff's complaint alleged, to the effect that at the time of the commencement of this action and at the time of the trial

thereof there was due, owing and unpaid from the defendant Orient Insurance Company to the plaintiff the sum of \$5,000.00, is true,—there was no evidence of any kind or character introduced at the trial of said cause which supports or tends to support the same; while the evidence introduced at the trial of said cause does show without any dispute whatsoever all the facts set forth and stated in paragraphs a, b and c on page 23 hereof.

And said defendants now assign the making of that portion of Finding No. 1, which is referred to in the paragraph immediately preceding this, as error, and respectfully request that they be allowed an exception to the making thereof by the court, and that such exception be designated herein as

#### EXCEPTION IX.

- (5) As to that portion of Finding No. 2, wherein the court finds that the allegation in paragraph 2 of the second cause of action in plaintiff's complaint contained, to the effect that the property in plaintiff's policies of insurance described continued to be of the value of \$19,537.50 up to and at the time of its destruction by the fire therein alleged, is true,—it was stipulated by and between both [84] parties before the commencement of the trial, that the value of the wine was admitted to be of the value as was stated in the complaint if the Court

found that there was any value at all. The question of whether or not the wine was of the value as set forth in the complaint was not at issue, the only question being whether or not it had any value, and if the Court found that the wine had any value it was admitted that it was the value as set forth in the complaint; while the evidence introduced at the trial of said cause does show without any dispute whatsoever all the facts set forth and stated in paragraphs a, b and c on page 23 hereof.

And said defendants now assign the making of that portion of said Finding No. 2, which is referred to in the paragraph immediately preceding this, as error, and respectfully request that they be allowed an exception to the making thereof by the Court, and that such exception may be designated herein as

#### EXCEPTION No. X.

- (6) As to that portion of Finding No. 2, wherein the Court finds that the allegation in paragraph 4 of the second cause of action in plaintiff's complaint contained, to the effect that the plaintiff was the owner of the property in his policies described at the time of the fire in said complaint alleged, is true,—there was no evidence of any kind or character introduced at the trial of said cause which supports or tends to support the same; while the evidence introduced at

the trial of said cause does show, without any dispute whatsoever, all the facts set forth and stated in paragraphs a, b and c on page 23 hereof.

And said defendants now assign the making of that portion of said Finding No. 2, which is referred to in the paragraph immediately preceding this, as error, and respectfully request that they be allowed an exception to the making thereof by the Court, and that such exception may be designated herein as

EXCEPTION No. XI.

- (7) As to that portion of said Finding No. 2, wherein the Court finds that the allegation in paragraph 5 of the second cause of action in plaintiff's complaint contained, to the effect that plaintiff's loss by the fire in his complaint alleged was in excess of \$1,500.00, namely, the sum of \$19,537.50, and that the actual cash value of the interest of plaintiff in the property insured at the time of said loss and at all times since said loss was in excess of \$1,500.00, is true,—it was stipulated by and between both parties before the commencement of the trial that the value of the [85] wine was admitted to be of the value as was stated in the complaint if the Court found that there was any value at all. The question of whether or not the wine was of the value as set forth in the complaint was not at issue, the only question being whether or not it had any

value, and if the Court found that the wine had any value it was admitted that it was the value as set forth in the complaint; while the evidence introduced at the trial of said cause does show, without any dispute whatsoever, all the facts set forth and stated in paragraphs a, b and c on page 23 hereof.

And said defendants now assign as error the making of that portion of said Finding No. 2, which is referred to in the paragraph immediately preceding this, and respectfully request that they be allowed an exception to the making thereof by the Court and that such exception may be designated herein as

EXCEPTION No. XII.

- (8) As to that portion of said Finding No. 2, wherein the Court finds that the allegation in paragraph 6 of the second cause of action in plaintiff's complaint contained, to the effect that the sum of \$1,500.00 is due, owing and unpaid from the defendant Employers' Fire Insurance Company to plaintiff, is true,—there was no evidence of any kind or character introduced at the trial of said cause which supports or tends to support the same; while the evidence introduced at the trial of said cause does show, without any dispute whatever, all the facts set forth and stated in paragraphs a, b and c on page 23 hereof. [86]

And said defendants now assign as error the making of that portion of said Finding No. 2, which



is referred to in the paragraph immediately preceding this, and respectfully request that they be allowed an exception to the making thereof by the Court and that such exception may be designated herein as

EXCEPTION No. XIII.

- (9) In Finding No. 3 the Court finds as follows:  
“That it is also true that the information filed by the United States Government, charging an alleged violation of the National Prohibition Act by plaintiff, was dismissed on the 6th day of October, 1924, and further that the libel proceedings filed by the United States Government against the wine owned by plaintiff and insured by defendants was dismissed on the 5th day of January, 1927, and no forfeiture of said wine was made to the United States Government.”

And said defendants now assign as error the making of that finding for the following reasons, to wit:

- (a) As to the dismissal of said information on the 6th day of October, 1924, the evidence shows without any dispute whatever that, notwithstanding such dismissal, the Prohibition Department of the United States Government thereafter and on the 26th day of December, 1924, revoked plaintiff's permit for his violation of the terms thereof, and the provisions of the National Prohi-

bition Act, and therefore said dismissal was and is absolutely immaterial.

- (b) As to the dismissal of the libel suit against the property of plaintiff on the 5th day of January, 1927, that was about one and a half years after the property affected by that suit had been destroyed by fire, which left no reason for continuing that suit, and, therefore, said dismissal was and is absolutely immaterial.

Said defendants respectfully request, therefore, that they be allowed an exception to the making of said finding by the Court and that such exception may be designated herein as

EXCEPTION No. XIV. [87]

- (10) In Finding No. 5 the Court finds that it is not true that plaintiff was guilty of any fraud or false swearing touching any matter relating to his insurance, or touching any matter or thing whatsoever, either before or after loss.

And said defendants now assign the making of that finding as error, for the following reasons, namely:

- (a) By reason of all the facts set forth and stated in paragraphs designated as (a), (b) and (c) on page 23 hereof;
- (b) For all the reasons set forth in paragraph (5), page 3 hereof;

and said defendants respectfully request that they be allowed an exception to the making of said find-

ing by the Court, and that said exception be designated herein as

EXCEPTION No. XV.

(11) As to the first Conclusion of Law made by the Court, namely that the plaintiff is entitled to judgment against the defendant Orient Insurance Company for the sum of \$5,000.00, together with interest thereon at 7% per annum from February 5th, 1926, and costs of suit,—there was no evidence of any kind or character introduced at the trial of said cause which supports or tends to support that Conclusion; while on the contrary the evidence introduced at the trial of said cause shows without any dispute whatever—

- (a) All the facts set forth and stated in the paragraphs designated as (a), (b) and (c) on page 23 hereof, which facts under the National Prohibition Act deprived said plaintiff of any ownership whatever in the property in his policies described, and deprived him of the right to possess or use or dispose of the same.
- (b) All the facts set forth and stated in paragraph (5) on page 3 hereof; all of which facts clearly show that the plaintiff not only wilfully swore falsely but that he did so for the purpose of inducing the defendants

to pay him the amounts in his policies named.

- (c) That said Conclusion of Law is not supported by the findings of the Court, but is in direct opposition thereto, it being specifically found by the Court in Finding No. 3 that plaintiff's permit from the Federal Prohibition Commissioner of the [88] United States Government to manufacture and possess wine was revoked by said Commissioner on the 26th day of December, 1924; while it is expressly provided by Section 25, Title 2 of the National Prohibition Act that no property rights shall exist in any liquor or property intended for use in violating that Act, or which has been so used, and in and by the order revoking plaintiff's permit it is expressly stated that it was revoked because plaintiff had illegally disposed of wine in violation of the terms of said permit and of the National Prohibition Act.

And said defendants now assign the making of that conclusion of law by the Court as error, and respectfully request that they be allowed an exception to the making of the same by the Court, and that such exception may be designated herein as

EXCEPTION No. XVI.

(12) As to the second Conclusion of Law made by the Court, namely, that the plaintiff is entitled to judgment against the defendant Employers' Fire Insurance Company for the sum of \$1,500.00, together with interest thereon at 7% per annum from February 5th, 1926, and costs of suit,—there was no evidence of any kind or character introduced at the trial of said cause which supports or tends to support that Conclusion; while, on the contrary, the evidence introduced at the trial of said cause shows without any dispute whatever—

- (a) All the facts set forth and stated in paragraphs designated as (a), (b) and (c) on page 23 hereof, which facts under the National Prohibition Act deprived said plaintiff of any ownership whatever in the property in his policies described, and deprived him of the right to possess or use or dispose of the same.
- (b) All the facts set forth and stated in paragraph (5) on page 3 hereof; all of which facts clearly show that the plaintiff not only wilfully swore falsely but that he did so for the purpose of inducing the defendants to pay him the amounts in his policies named.



- (c) That said Conclusion of Law is not supported by the findings of the Court, but is in direct opposition thereto, it being specifically found by the Court in Finding No. 3 that plaintiff's permit from the [89] Federal Prohibition Commissioner of the United States Government to manufacture and possess wine was revoked by said Commissioner on the 26th day of December, 1924; while it is expressly provided by Section 25, Title 2 of the National Prohibition Act that no property rights shall exist in any liquor or property intended for use in violating that Act, or which has been so used, and in and by the order revoking plaintiff's permit it is expressly stated that it was revoked because plaintiff had illegally disposed of wine in violation of the terms of said permit and of the National Prohibition Act.

And said defendants now assign the making of that conclusion by the Court as error, and respectfully request that they may be allowed an exception to the making of the same by the Court, and that such exception may be designated herein as

## EXCEPTION No. XVII.

After the signing of said findings of fact and conclusions of law by the Court, judgment was made and entered in said cause in favor of the plaintiff and against the defendants in accordance therewith, and said defendants now assign the decision of the Court and the judgment made thereon, and both thereof, as against law, in that there was no evidence introduced at the trial of said cause which supports, or tends to support, the same; while on the contrary there was evidence introduced at the trial of said cause, and found by the Court in Finding No. 3 of its findings of fact to be true, which shows without any dispute whatever that the decision of the Court, and the judgment made and entered thereon in said cause, are, and that each of them is, against law, for all the reasons which are hereinbefore set forth and stated.

And said defendants now assign the decision of the Court, and the judgment made thereon, and each thereof, as error, and they respectfully request that they be allowed an exception thereto, which exception may be designated herein as

## EXCEPTION No. XVIII. [90]

NOW, THEREFORE, in furtherance of justice, and that right may be done, defendants present the foregoing as their bill of exceptions in this case, and pray that the same may be allowed, signed and certified to by the Judge of said court, as provided

by law, and filed as a bill of exceptions herein, and that the exhibits referred to herein, an index of which is attached hereto, be made a part hereof, and that the Clerk of said court, by order of said Court, be instructed to attach said exhibits to said bill of exceptions. [91]

### INDEX TO EXHIBITS.

Plaintiff's Exhibits 1 and 2 are the policies of insurance involved in this action and are referred to on page 2 hereof.

Plaintiff's Exhibits 3 and 4 are the Proofs of Loss furnished by plaintiff to defendants and are referred to on page 3 hereof.

Plaintiff's Exhibit 5 is dismissal of suit, United States vs. Ariasi, referred to on page 5 hereof.

Plaintiff's Exhibit 6 is United States vs. 9635 gallons of wine, referred to on pages 5 and 6.

Plaintiff's Exhibit 7 is letter written by Prohibition Department to plaintiff cancelling bond, referred to on page 6 hereof.

Defendants' Exhibit "A," Revocation of Plaintiff's Permit, pages 4 and 5 hereof.

IT IS AGREED that the foregoing engrossed bill of exceptions is true and correct.

Dated this 29th day of November, 1927.

R. L. DAILY,

Attorney for Plaintiff.

MILLER & THORNTON,

Attorneys for Defendants. [92]

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CERTIFICATE OF SETTLEMENT OF BILL  
OF EXCEPTIONS.

IT APPEARING TO THE COURT that the foregoing bill of exceptions contains all the material facts occurring at the trial of said cause, including the rulings of the Court together with the exceptions thereto taken and allowed, and all material matters and things occurring upon said trial, except the exhibits introduced in evidence which are hereby made a part of said bill of exceptions, and the Clerk of this court is hereby ordered to attach said exhibits thereto,—

NOW, THEREFORE, upon motion of defendants' attorneys IT IS HEREBY ORDERED that said proposed bill of exceptions be and the same hereby is settled as a true bill of exceptions in said cause, and the same is hereby certified accordingly by the undersigned Judge of said court, who presided at the trial of said cause, as a full, true and correct bill of exceptions, and the Clerk of this court is hereby ordered to file the same as a record in said cause, and in due time submit the same to

the Honorable Circuit Court of Appeals for the Ninth Circuit.

Dated: this 3d day of December, 1927.

A. F. ST. SURE,  
District Judge.

[Endorsed]: Filed Dec. 3, 1927. [93]

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[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR.

The defendant, Orient Insurance Company of Connecticut, and The Employers Fire Insurance Company of Massachusetts, feeling aggrieved by the decision and the judgment entered thereon in the above-entitled cause on the 17th day of November, 1927, wherein and whereby it was adjudged that the plaintiff have and recover from the defendant, Orient Insurance Company, the sum of \$5,000.00, and from the defendant, The Employers Fire Insurance Company, the sum of \$1,500.00, with interest and costs.

Now come Miller & Thornton, attorneys for said defendants and petition the Court for an order allowing them, said defendants, to prosecute a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order



be made fixing the amount of supersedeas bond which the said defendants shall give and furnish upon said writ of error, and that upon the giving of such bond, [94] all further proceedings in this court be suspended, stayed and superseded until the determination of said writ of error by the United States Circuit Court of Appeals in and for said Ninth Circuit.

And your petitioners will ever pray, etc.,

MILLER & THORNTON,

Attorneys for Defendants and Petitioners.

[Endorsed]: Filed December 10th, 1927. [95]

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[Title of Court and Cause.]

#### ASSIGNMENTS OF ERROR.

Come now the defendants above named, by their attorneys Miller & Thornton, and file this their assignments of error upon which they will rely in the prosecution of a writ of error in said cause from that certain judgment made by this Honorable Court on the 17th day of November, 1927, which assignments are as follows:

(1) The United States District Court for the Southern Division of the Northern District of California erred in admitting in evidence over the objection of the defendants a certified copy, or any copy, of an information in the case of the United

States vs. Clemente Ariasi, wherein and whereby the plaintiff above named is charged with selling wine in his premises at Santa Rosa, California, and that said cause was dismissed on the 6th day of October, 1924, and plaintiff's bond exonerated and his sureties discharged. [96]

(2) The United States District Court for the Southern Division of the Northern District of California erred in admitting in evidence, over the objection of the defendants, the papers in the case of the United States vs. 9365 Gallons of Wine, being the wine referred to in the winery of plaintiff at Santa Rosa, California, and that said cause was dismissed on the 5th day of January, 1927, on the motion of the Assistant United States District Attorney.

(3) The United States District Court for the Southern Division of the Northern District of California erred in admitting in evidence a letter written by the Acting Federal Prohibition Commissioner to the plaintiff, dated May 11th, 1926, wherein and whereby it is stated that Bond, Form 1538, in the sum of \$5,000.00 effective April 1, 1923, was cancelled as of March, 1926, and that notice to that effect had been given to the United States Fidelity & Guaranty Company.

(4) The United States District Court for the Southern Division of the Northern District of California erred in rendering its decision in said

cause in favor of the plaintiff and against the defendants as prayed for in plaintiff's complaint.

(5) The United States District Court for the Southern Division of the Northern District of California erred in refusing to sign and cause to be filed the findings of fact and conclusions of law presented to it by the defendants above named.

[97]

(6) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. I, that the allegation in paragraph III of the first cause of action in plaintiff's complaint alleged, to the effect that the property in said plaintiff's policy of insurance described continued to be of the value of \$19,537.50 up to and at the time of the destruction thereof by fire, is true.

(7) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. I, that the allegation in paragraph V of the first cause of action in plaintiff's complaint alleged, to the effect that at the time of the fire in said complaint referred to plaintiff was the owner of the property in his policies of insurance described, is true.

(8) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in Finding

No. I, that the allegation in paragraph VI of the first cause of action in plaintiff's complaint alleged, to the effect that the plaintiff suffered a loss because of the fire in said complaint referred to in excess of \$5,000.00, namely, in the sum of \$19,537.50, and that the actual cash value of the interest of the plaintiff in the property in his policies described at the time of said loss and at all times since said loss was in excess of \$5,000.00, is true. [98]

(9) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. I, that the allegation in paragraph VII of the first cause of action in plaintiff's complaint alleged, to the effect that at the time of the commencement of this action and at the time of the trial thereof there was due, owing and unpaid from the defendant Orient Insurance Company to the plaintiff the sum of \$5,000.00, is true.

(10) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. II, that the allegation in paragraph II of the second cause of action in plaintiff's complaint alleged, to the effect that the property described in plaintiff's policies of insurance continued to be of the value of \$19,537.50 up to and at the time of its destruction by the fire in said complaint alleged, is true.

(11) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. II, that the allegation in paragraph IV of the second cause of action in plaintiff's complaint alleged, to the effect that the plaintiff was the owner of the property in his policies described at the time of the fire in said complaint alleged, is true.

(12) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. II, that the allegation [99] in paragraph V of the second cause of action in plaintiff's complaint alleged, to the effect that the plaintiff's loss by the fire in his complaint alleged was in excess of \$1,500.00, namely in the sum of \$19,537.50, and that the actual cash value of the interest of plaintiff in the property insured at the time of said loss and at all times since said loss was in excess of \$1,500.00, is true.

(13) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. II, that the allegation in paragraph VI of the second cause of action in plaintiff's complaint alleged, to the effect that the sum of \$1,500.00 is due, owing and unpaid from the defendant Employers' Fire Insurance Company to plaintiff, is true.



(14) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. III, that the information filed by the United States Government charging an alleged violation of the National Prohibition Act by plaintiff was dismissed on the 6th day of October, 1924, and that the libel proceedings filed by the United States Government against the wine owned by plaintiff and insured by defendants was dismissed on the 5th day of January, 1927, and no forfeiture of said wine was made to the United States.

(15) The United States District Court for the Southern Division of the Northern District of California erred in finding as it does in its Finding No. V that it is not true [99a] that plaintiff was guilty of any fraud or false swearing touching any matter relating to his insurance or touching any matter or thing whatsoever, either before or after loss.

(16) The United States District Court for the Southern Division of the Northern District Court erred in making its first conclusion of law to the effect that plaintiff is entitled to judgment against the defendant Orient Insurance Company in the sum of \$5,000.00, together with interest thereon at 7% per annum from February 5th, 1926, and costs of suit.

(17) The United States District Court for the Southern Division of the Northern District Court

erred in making its second conclusion of law to the effect that the plaintiff is entitled to judgment against the Employers' Fire Insurance Company for the sum of \$1,500.00, together with interest thereon at the rate of 7% per annum from February 5th, 1926, and costs of suit.

(18) The United States District Court for the Southern Division of the Northern District Court erred in ordering and directing that judgment be made and entered against the defendants herein and in favor of the plaintiff as prayed for in plaintiff's complaint.

MILLER & THORNTON,

Attorneys for Defendants (Plaintiffs in Error).

[Endorsed]: Filed December 10th, 1927. [100]

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[Title of Court and Cause.]

ORDER ALLOWING WRIT OF ERROR.

Upon motion of Miller & Thornton, attorneys for the defendants above named, and upon the filing herein of a petition for a writ of error and assignments of error as required by law, it is hereby

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the Honorable United States Circuit Court of Appeals for the Ninth Circuit the judgment entered herein;

AND IT IS FURTHER ORDERED, that the amount of appeal and supersedeas bond on said writ of error is hereby fixed at the sum of Eight Thousand Dollars (\$8,000), to be given by the defendants.

IN WITNESS WHEREOF the above order is granted and allowed this 10th day of December, A. D. 1927.

A. F. ST. SURE,  
Judge.

[Endorsed]: Filed December 10th, 1927. [101]

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[Title of Court and Cause.]

COST BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, as principals, and American Employers' Insurance Company, a corporation, organized under the laws of the State of Massachusetts and authorized to transact business as surety in the State of California, are held and firmly bound unto Clemente Ariasi, the plaintiff in the above-entitled action, in the sum of Eight Thousand Dollars (\$8,000.00), for which sum well and truly to be paid to said Clemente Ariasi, the plaintiff, his heirs, administrators, executors and assigns, bind ourselves,

our and each of our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this 12 day of December, A. D. 1927.

The condition of this obligation is such that whereas the above-named defendants, Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, have [102] sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled cause made and entered by the Southern Division of the District Court of the United States for the Northern District of California; and

WHEREAS, the said defendants Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, desire to supersede said judgment and stay the issuance of execution thereon pending the determination of said cause in the United States Circuit Court of Appeals for the Ninth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, shall prosecute said writ of error to effect and pay all necessary costs and damages awarded against it, including the full amount of said judgment and interest, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

IT IS FURTHER STIPULATED as a part of the foregoing bond, that in case of the breach of any condition thereof, the above-named District Court may, upon notice to the surety, American Employers' Insurance Company, above named, proceed summarily in said action or suit to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execution therefor.

ORIENT INSURANCE COMPANY, a Corporation,

By GEO. O. SMITH, Manager.

THE EMPLOYERS' FIRE INSURANCE COMPANY, a Corporation.

By WALTER E. MOORE, Asst. Mgr. [103]

AMERICAN EMPLOYERS' INSURANCE COMPANY.

By CHARLES V. JENSEN.

CHARLES V. JENSEN, (Seal)

Its Attorney in Fact.

State of California,

City and County of San Francisco,—ss.

On this 12th day of December, in the year of our Lord one thousand nine hundred and twenty-seven, before me, John McCallan, a notary public in and for said city and county and State, residing therein, duly commissioned and sworn, personally appeared Charles V. Jensen, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of American Employers' Insurance Co., and acknowledged to me that he sub-



scribed the name of American Employers' Insurance Co. thereto as surety, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the city and county and state aforesaid the day and year in this certificate first above written.

[Seal]

JOHN McCALLAN,

Notary Public in and for said City and County of San Francisco, State of California.

My commission expires April 12, 1929.

Approved as to form, sufficiency and amount, December 12, 1927.

R. L. DAILY,  
Attorney for Plaintiff.

Approved this 13th day of December, A. D. 1927.

A. F. ST. SURE,  
Judge.

[Endorsed]: Filed Dec. 13, 1927. [104]

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[Title of Court and Cause.]

STIPULATION AS TO TRANSCRIPT OF RECORD.

It is hereby stipulated by and between the parties to the above-entitled cause with relation to the printing of the transcript of record as follows, to wit:

- (1) That the printed portions of each of the policies of insurance involved in this action, and

the printed portion of the slip attached to the first page of each of said policies are identical.

(2) That the policy of the defendant, Orient Insurance Company, shall be printed in full, with the following exceptions, namely:

(a) The only portion of the slip attached to the first page of said policy that need be printed, is that reading as follows, to wit: [105]

“5,000.00—On stock of wine, manufactured, unmanufactured, in process of manufacture and on materials and supplies used for manufacturing same, his own, or held by him in trust or on commission, or sold but not delivered all while contained in the frame Winery building situate on the west side of Polk Street, opposite end of West Seventh Street, Santa Rosa, California.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 225598 of the Orient Insurance Company Agency at Santa Rosa, California. Dated September 29, 1924.

Insurance Map.

Sheet 55.

Block 214.

BARNETT & READING,  
Agent.”

- (b) Nothing on the 3d page of said policy need be printed which is below the line thereon numbered 153.
- (c) No portion of the outside back page of said policy need be printed.
- (3) That the only portion of the policy of Employers' Fire Insurance Company need be printed are the following portions thereof, namely:
  - (a) All of the first page of said policy down to and including the line on that page numbered 14 and the attestation clause reading as follows: [106]

“IN WITNESS WHEREOF, this Company has executed and attested these presents.

THE EMPLOYERS' FIRE INSURANCE  
COMPANY, BOSTON, MASS.

SAMUEL APPLETON,

President.

H. BUDEN, Secretary.

Countersigned at Santa Rosa, Calif., this 25th day of Sept., 1924.

BARNETT & READING,

Agent.”

- (b) All that portion of the slip attached to the first page of said policy reading as follows:

“\$1,500.00—on stock of wine, manufactured, un-manufactured, in process of manufacture and on materials and supplies used for manufac-

turing same, his own, or held by him in trust or on commission, or sold but not delivered; all while contained in the frame winery building, situate on the west side of Polk Street, opposite end of West Seventh Street,

Santa Rosa, California.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 14386 of the Employers' Fire Insurance Co. Agency at Santa Rosa, Calif., Dated October 6, 1924.

Insurance Map.

Sheet ———.

Block ———.

BARNETT & READING,  
Agent."

Dated this ——— day of December, 1927.

ROY L. DAILY.

By GEO. POWELL,

Attorney for Plaintiff.

MILLER and THORNTON,

Attorneys for Defts.

[Endorsed]: Due service and receipt of copy of the within stipulation as to transcript of record is hereby admitted this ——— day of December, 1927.

R. L. DAILY.

By F. W. POWELL,

Attorney for Pltf.

Filed Jan. 13, 1928. [107]

[Title of Court and Cause.]

ORDER TO TRANSMIT EXHIBITS.

IT IS HEREBY ORDERED that the original exhibits used in the trial of the above-entitled cause in the United States District Court be by the Clerk of said court transmitted with the transcript on appeal to the United States Circuit Court of Appeals at San Francisco, California.

Done in open court this 13th day of January, 1928.

A. F. ST. SURE,  
United States District Judge.

[Endorsed]: Filed January 13th, 1928. [108]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit a true and correct copy of the record in the above-entitled cause containing the following papers:

- (1) Complaint;
- (2) Answer of defendant Employers' Fire Insurance Company;
- (3) Answer of defendant Orient Insurance Company;



- (4) Exhibits introduced in evidence by plaintiff;
- (5) Exhibits introduced in evidence by defendants;
- (6) Opinion of Court;
- (7) Findings of fact and conclusions of law proposed by plaintiff;
- (8) Objections thereto by defendants and findings of fact and conclusions of law proposed by said defendants;
- (9) Judgment on findings proposed by plaintiff;
- (10) Petition of defendants for a new trial;
- (11) Stipulation extending time for bill of exceptions to September 10th, 1927;
- (12) Stipulation extending time for bill of exceptions to September 30th, 1927;
- (13) Stipulation extending time for bill of exceptions to October 10th, 1927;
- (14) Stipulation extending time for bill of exceptions to October 31st, 1927;
- (15) Stipulation extending time for bill of exceptions to ten days after decision on motion for new trial;
- (16) Order denying defendants' motion for new trial;
- (17) Bill of exceptions allowed and approved by the court;
- (18) Petition for writ of error;
- (19) Assignment of errors;
- (20) Order allowing writ of error;
- (21) Bond on writ of error;

- (22) Writ of error;
- (23) Citation on writ of error;
- (24) Stipulation as to printing of transcript;
- (25) Order to transmit original exhibits;
- (26) Praeceptum for transcript;
- (27) Certificate of Clerk to transcript;

together with the original writ of error and citation and certificate under your seal stating in detail the costs of the record and by whom paid.

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Attorney for Defendants.

[Endorsed]: Filed January 6th, 1928. [109]

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[Title of Court and Cause.]

AMENDED PRAECEPTUM FOR TRANSCRIPT  
OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit a true and correct copy of the order extending the term of court for the record in the above-entitled cause in addition to the papers and documents requested in the praecipe heretofore filed on the 6th day of January, 1928.

MILLER & THORNTON,  
Attorneys for Defendants.

[Endorsed]: Filed January 9th, 1928. [110]

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Southern Division, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, plaintiffs in error, and Clemente Ariasi, defendant in error, a manifest error hath happened, to the great damage of the said Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and



Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk of the District Court of the United States for the Northern District of California.

By Lyle S. Morris,

Deputy Clerk, U. S. District Court, Northern District of California. [112]

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CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States to Clemente Ariasi, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Orient Insurance Company, a corporation, and The Employers' Fire Insurance Company, a corporation, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in



error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California, this 13th day of December, A. D. 1927.

A. F. ST. SURE,  
United States District Judge. [113]

United States of America,—ss.

On this 13th day of December, in the year of our Lord one thousand nine hundred and twenty-seven, personally appeared before me Thomas F. O'Neill, the subscriber, and makes oath that he delivered a true copy of the within citation to R. L. Daily, attorney for Clemente Ariasi, defendant in error.

THOMAS F. O'NEILL.

Subscribed and sworn to before me at San Francisco, Calif., this 13th day of December, A. D. 1927.

[Seal] JOHN E. MANDERS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 14, 1927.

Due service and receipt of a copy of the within citation on writ of error is hereby admitted this 13th day of December, 1927.

A. L. DAILY,  
Attorney for Defendant in Error.



[Endorsed]: No. 5377. United States Circuit Court of Appeals for the Ninth Circuit. Orient Insurance Company, a Corporation, and The Employers' Fire Insurance Company, a Corporation, Plaintiffs in Error, vs. Clemente Ariasi, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed February 2, 1928.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.